

COPY

United States Department of Justice
Bureau of Alcohol, Tobacco, Firearms and Explosives

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In the Matter of: :
: :
Revocation of License issued :
to Dick's Sporting Goods, Inc. :
d/b/a Dicks' Sporting Goods, :
Inc., Store Number 375 :
: :
FFL # 1-62-157-01-3K-03207 :
-----x

February 5, 2014

ATF Memphis Field Office
2600 Thousand Oaks Boulevard
Suite 2300
Memphis, Tennessee 38118

The hearing was convened, pursuant to notice,
at time, MICHAEL T. REILLY, Hearing Officer, presiding.

APPEARANCES:

PATRICIA LANCASTER, Nashville Division Counsel

B. TODD MARTIN, Nashville Division Counsel

MARK BARNES, Counsel for Licensee

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P R O C E E D I N G S

(9:18 a.m.)

HEARING OFFICER: Okay, good morning. This is a hearing being conducted under the provisions of § 923(f)(2), Title 18, the United States Code, and § 478.74, Title 27, Code of Federal Regulations.

The time is 9:18, the date is February 5th. An audio recording is being made of these proceedings for the record. The place is the ATF Memphis Field Office at 2600 Thousand Oak Boulevard, Suite 2300, in the City of Memphis, in the County of Shelby, in the State of Tennessee.

At this time, I'll ask the Licensee and those present on their behalf to state and spell their last name, and give their relationship to the hearing.

MR. BARNES: Mark Barnes. I'm attorney for the Licensee and the last name is spelled B-A-R-N-E-S.

MR. NELSON: I'm Wally Nelson. I'm the consultant to Mark Barnes. Last name, N-E-L-S-O-N.

MR. DODSON: Kevin Dodson from Dick's Sporting Goods. I'm the manager of Loss Prevention/Compliance & Logistics. Last name's spelled D-O-D-S-O-N.

MS. TORTORICE: Mary Tortorice. I am a vice president in Legal and chief compliance officer of Dick's Sporting Goods. And my last name is spelled

1 T-O-R-T-O-R-I-C-E.

2 HEARING OFFICER: On behalf of the Government,
3 we have?

4 MS. LANCASTER: I'm Patricia Lancaster,
5 attorney for the Nashville Field Division. I'll be
6 presenting the Government's case in chief. And I'll ask
7 my colleagues to identify themselves.

8 HEARING OFFICER: Can you spell your last name,
9 please?

10 MS. LANCASTER: L-A-N-C-A-S-T-E-R.

11 HEARING OFFICER: Thank you.

12 MR. MARTIN: My name's Todd Martin. I'm the
13 Division Counsel for the Nashville Field Division. Last
14 spelling is M-A-R-T-I-N.

15 MR. WILLIAMS: Thomas Williams, Industry
16 Operations Investigator for Nashville II Area Office.
17 The last name is spelled W-I-L-L-I-A-M-S.

18 HEARING OFFICER: Also in attendance is the
19 Director of Industry Operations for the Nashville Field
20 Division, Kevin Boydston.

21 My name is Michael T. Reilly. I'm the Hearing
22 Officer by the direction under the authority of the Chief
23 of the National Licensing Center for the Bureau of
24 Alcohol, Tobacco, Firearms and Explosives with the United
25 States Department of Justice.

1 This hearing is an administrative procedure,
2 is informal in nature and it is to review to the Notice
3 of Revocation of license, the ATF Form 4500, that was
4 issued under the provisions of § 923, Title 18, the
5 United States Code.

6 The license was issued to Dick's Sporting
7 Goods, Inc. doing business as Dick's Sporting Goods,
8 Inc., Store Number 375. The address is 2393 North
9 Germantown Parkway, in the City of Memphis, in the State
10 of Tennessee. The license was issued as a Type 01 Dealer
11 in Firearms other than Destructive Devices.

12 Who would like to speak on behalf of the
13 company?

14 MR. BARNES: I'll be speaking on behalf of the
15 company.

16 HEARING OFFICER: Okay. And your position with
17 the company is what?

18 MR. BARNES: Attorney.

19 HEARING OFFICER: Attorney for the company?

20 MR. BARNES: Right.

21 HEARING OFFICER: And a result of receiving the
22 4500, you requested a hearing; is that correct?

23 MR. BARNES: That is correct.

24 HEARING OFFICER: Okay. So at this time, I'll
25 ask the Government to present their case, to review their

1 circumstances into any of the investigative findings
2 that have a bearing on these proceedings.

3 MS. LANCASTER: Thank you. This matter is very
4 simple, and it's based on three different allegations.
5 Of course in order to be actionable, a violation of the
6 Gun Control Act must be shown to be willful according to
7 the statute which requires willfulness and case law of
8 which requires willfulness and defines willfulness.

9 The first allegation is transfer to a person
10 with reason to believe that person was prohibited, the
11 second allegation is false information in the
12 Acquisition/Disposition Record as to the purchaser, and
13 the third allegation is false information on an ATF
14 Form 4473 as to the purchaser.

15 And all three of these allegations are actually
16 all related to two transactions which are related to each
17 other as the evidence will show.

18 So that is the basis that the Government is
19 alleging as willful violations supporting this action.

20 HEARING OFFICER: Mr. Barnes, do you have an
21 opening statement?

22 MR. BARNES: I do. Thank you, Mr. Reilly.

23 First of all, it's our position that the FFL
24 cannot be revoked because there was no willful violation
25 of the Gun Control Act.

1 Now, willfulness means somebody knew of their
2 legal obligation and purposely disregarded it or they
3 were plainly indifferent to that obligation; we have case
4 law for that that we could submit to Mr. Reilly. And
5 that there's also a conscious, intentional, deliberate,
6 voluntary decision; we can also submit case law on that.

7 It's clear from the legislative history when
8 the Gun Control Act was amended from Senate Report 98-583
9 that revocations are not to be based on mistakes or human
10 error. As the evidence will show, we will show there was
11 a human error here but it was certainly inadvertent.

12 Examples of willful conduct and violation of
13 the Gun Control Act, for instance, in the DiMartino vs.
14 Buckles case which does stand for the proposition that,
15 you know, one violation can serve as a basis for
16 revocation. But there were multiple violations in that
17 case.

18 Generally, there are multiple inspections and
19 repeated violations before ATF takes on a revocation.
20 Not always because when there's a very egregious
21 violation, that can serve as the basis for a Notice of
22 Revocation.

23 Now the actual circumstances here that we'll
24 show in the evidence is that the store clerk,
25 Mr. Krueger, nor any other Dick's employee knew or should

1 have known that the firearm was purchased for the
2 benefit of a prohibited person.

3 Mr. Brady who was the first purchaser and the
4 husband attempted to purchase as a gift for his wife --
5 and we'll introduce that evidence and the report of our
6 investigator who is in Arizona, Tommy Wittman, former
7 Assistant Special Agent in Charge to the Phoenix Field
8 Division; he interviewed the purchasers. He attempted to
9 purchase the gun as a gift for his wife, and he didn't
10 even know that he was a prohibited person.

11 When he walked away from the purchase
12 transaction, he came back to the home, informed his wife,
13 who was supposed to go on a pheasant hunt and she needed
14 a shotgun, that there was some mix up at the Veterans
15 Administration and that he would not be able to purchase
16 the gun. And if she wanted it, he was going to get it as
17 a gift for her, that's what he said, that she should go
18 back to the store and just buy it for herself.

19 He properly completed the paperwork and he was
20 properly denied, but the clerk forgot to put his denial
21 in the denial log. Now the denial log, as the evidence
22 will show and as Dick's will testify, they have a very
23 complete and comprehensive internal control system in
24 Dick's to try to catch straw purchasers. But here
25 through inadvertent error, the clerk forgot to record the

1 denial in the denial log.

2 Nine hours later when the wife returned to get
3 the shotgun, he would have checked the denial log but he
4 would have found that it was empty; there was no entry in
5 the denial log.

6 She properly completed the form. There was no
7 other indication that she was a prohibited person. And
8 she was, in fact, purchasing the shotgun for her own
9 account, for her own purchase.

10 Therefore, it's our contention that our FFL
11 cannot be revoked because there was no attempted or
12 actual straw purchase.

13 The definition of a straw purchase is the legal
14 purchase of a firearm by one person for another. More
15 often than not, the recipient is a prohibited person.

16 Now, just a few weeks ago in oral argument
17 before the Supreme Court of the United States in the
18 Baranski case, the position of the United States
19 Government was very clear. Gift transactions are
20 absolutely permissible, there's no problem with them.
21 And also in the *Federal Firearms Reference Guide*, and I
22 see we have a copy here at the table, on page 165, that
23 makes it clear.

24 So Mr. Brady went to purchase the firearm as a
25 gift, he was denied. He came back and told his wife that

1 he could not obtain the firearm as a gift for her, that
2 he would have to, she would have to obtain it for her
3 herself, she did. She's not a prohibited possessor.

4 And our position is there was no willfulness on
5 the part of the store.

6 The system worked as it was supposed to except
7 in one instance where the denial log had not been
8 properly amended by the clerk. If he had amended it, he
9 would have checked it as he normally does and seen that
10 he had made a disposition or attempted disposition to
11 Mr. Brady earlier in the day, and he could have
12 interdicted the transaction.

13 We'll present his interview by Mr. Wittman, the
14 investigator, and he has no recollection except that that
15 was a very busy period during the hunting season, and
16 there were distractions that were keeping him from
17 attending to everything that he needed to attend to. But
18 he doesn't have any recollection basically of the
19 transaction.

20 We also cannot have a license revoked. This is
21 the first time I've seen in a Notice of Revocation
22 allegations that false recordkeeping was entered into the
23 A&D records and false information entered into the 4473.

24 We actually would be interested in hearing more
25 from the Government on that legal theory on why that's

1 appropriate because in effect, you know, when a
2 transaction is being transacted, the proper information
3 that has to go into the recordkeeping is the information
4 of the individual who is making application for the
5 firearm period, end of discussion. There really isn't
6 any other information that can be put into the
7 recordkeeping system.

8 I think it's, or it's our legal position, it
9 would be kind of an absurd result that if we had a person
10 appearing at the counter and somebody, and they were, and
11 it were a true straw purchase situation that, you know,
12 the clerk could not be cited for entering the information
13 into the record, by entering into the record or into the
14 A&D system the information of the straw purchaser or the
15 intended recipient and then transfer the firearm to
16 somebody else.

17 So we understand the nature of the Government's
18 argument with regard to willfulness and enabling a straw
19 purchase, and that we'll be able to rebut we think very
20 effectively. But we certainly think as a matter of law
21 the Government cannot claim that there was false
22 information entered into the recordkeeping.

23 That concludes my opening statement.

24 HEARING OFFICER: Thank you. Ms. Lancaster.

25 MS. LANCASTER: The Government does not find

1 that it's appropriate to interject argument in opening
2 even though the rules don't apply here. We will make
3 responses to various matters raised by the FFL's attorney
4 on our closing including case law that will contravene
5 what the argument has been made by the Licensee's
6 attorney.

7 Initially in presenting the Government's case,
8 I have a number of documents which are basically in
9 administrative nature which go to the basis for our being
10 here for this hearing today and the basis for bringing
11 this action.

12 The first one is the federal licensing system
13 printout which merely shows that Dick's Sporting Goods at
14 the location already mentioned does hold a Federal
15 Firearms License. These requirements do not apply to a
16 person who is not licensed under the Gun Control Act.

17 So Government Number 1 is for the proof that
18 Dick's Sporting Goods at the location stated does hold a
19 Federal Firearms License as alleged in the notice. It's
20 Government Number 1, the federal licensing system
21 printout, page 1. And I'll just hold all these until I
22 submit them.

23 Government Number 2 is the Notice of Revocation
24 which we have mentioned in our openings. It gives Dick's
25 Sporting Goods the allegations which are alleged as

1 willful violations of the Gun Control Act to support
2 the action of revocation of that license. It is dated
3 November 21 of 2013.

4 And in addition to that notice, the Licensee
5 timely submitted a request for hearing on the
6 revocations. Government Number 3 is that request for
7 hearing submitted on behalf of the Licensee by Attorney
8 Christopher Thomas of Mark Barnes & Associates,
9 Attorneys. It's dated December 6, and the request was
10 submitted in writing. It also included for convenience a
11 copy of that actual Notice of Revocation.

12 Government 4 is a power of attorney that was
13 submitted on behalf of the Licensee which appoints the
14 Mark Barnes & Associates, Attorneys, to represent them in
15 this particular matter on Store Number 375.

16 Government 5 is ATF's initial notice of hearing
17 that was submitted to the Licensee. And initially, this
18 hearing was scheduled for January 15. So the first notice
19 of hearing dated December 18 gives notice of that hearing
20 date, January 15. And it was submitted to the Licensee
21 and to the counsel for the Licensee.

22 It also includes information regarding
23 requirements for federal buildings and so forth.
24 Attached to that we have a copy of the certified mail
25 receipt and return domestic receipt showing that it was

1 received by counsel for the Licensee.

2 At the request of the Licensee counsel, the
3 hearing was delayed, and it was rescheduled for today at
4 this time and date and at this place. It was issued on
5 January 3rd scheduling the hearing for today, Government
6 Number 6, and it includes a certified mail receipt and
7 domestic return receipt for delivery of that item.

8 So the Government submits Government 1 through
9 6 as described on the record for evidence at the
10 beginning of the case.

11 HEARING OFFICER: Government Exhibits 1 through
12 6 entered into the record.

13 MS. LANCASTER: Thank you.

14 (Whereupon, Government's
15 Exhibit Numbers 1 through 6
16 were marked for
17 identification and received
18 into evidence.)

19 MS. LANCASTER: At this time, we call our first
20 witness.

21 (Whereupon,

22 THOMAS WILLIAMS
23 was called as a witness, and after having been first duly
24 sworn, was examined and testified as follows:)

25 DIRECT EXAMINATION

1 BY MS. LANCASTER:

2 Q State your name for the record again, please.

3 A Thomas Williams.

4 Q And do speak up because we have pretty
5 sensitive equipment here, but we need to make sure we get
6 a good recording so that we have an accurate recording.
7 So if you'll use a good bit of volume with your voice.

8 How are you currently employed, Mr. Williams?

9 A I'm an Industry Operations Investigator with
10 the Nashville II Area Field Office.

11 Q Is that commonly referred to by the
12 abbreviation IOI?

13 A That's correct.

14 Q Give us a brief description of your duties and
15 responsibilities as an ATF IOI?

16 A Okay. Briefly, I qualify individuals or
17 businesses who would, who desire or would like to become
18 Federal Firearms Licensees or Federal Explosives
19 Licensees or Permitees.

20 I also conduct compliance inspections of
21 businesses or individuals who are currently Federal
22 Firearms Licensees or Federal Explosives Permitees or
23 Licensees.

24 Q How long have you been employed by ATF?

25 A Since 2001.

1 Q Were you in that same position all that time?

2 A That's correct.

3 Q Did you have any special training for
4 conducting your duties as an IOI?

5 A Yes. I was trained at FLETC, Federal Law
6 Enforcement Training Center. I also had on-the-job
7 training and also various classes through ATF throughout
8 the years.

9 Q The training that you had at the Federal Law
10 Enforcement Training Center, could you tell us about how
11 long that was?

12 A Well, it was approximately two months.

13 Q Did that include training on the requirements
14 on the Federal Firearms Laws and Regulations as applied
15 to Federal Firearms Licensees?

16 A Yes, it did.

17 Q Your on-the-job training, describe that for us,
18 please?

19 A Okay. I was assigned an experienced
20 investigator who was given the assignment to work with me
21 for a period of time whereas I would shadow him on his
22 assignments, assist him on his assignments with the
23 compliance inspections or application inspections with
24 the narratives. And then I would work some of the
25 assignments assisted by my IOI at the time or inspector

1 at the time. And he would review my work.

2 Once it was reviewed, my area supervisor would
3 review my work. They would critique it and then they
4 would make their recommendations.

5 And once that timeframe was over with and I
6 successfully went through that training then I was let go
7 and assigned work independently on my own.

8 Q Do you recall about how long it was that your
9 on-the-job training program lasted until you were
10 independently assigned your own work?

11 A I'd say approximately a year.

12 Q Does anyone review your work today?

13 A Yes.

14 Q Who reviews your work?

15 A My area supervisor.

16 Q You mentioned that you conduct compliance
17 inspections as well as qualification inspections for
18 Federal Firearms Licensees and applicants. Could you
19 tell us in general what is the purpose of a compliance
20 inspection?

21 A To make sure that licensees are in compliance
22 with the federal regulations. It's also an educational
23 opportunity for the licensees at the same time.

24 Q Could you explain in what way it's an
25 educational opportunity for the licensee?

1 A Well, it gives the licensee a chance to come
2 face to face with somebody who understands the
3 regulations and can answer any types of questions as well
4 as provide information to the licensee just in case they
5 haven't been following the information on our websites or
6 gathering or coming to any of our seminars. But it gives
7 the licensee an opportunity to ask questions and also
8 receive information.

9 Q What about the qualification inspections for
10 applications for Federal Firearms Licensees, does that
11 include any education?

12 A Yes, it does. At that time we verify that the
13 applicant who they are, who they say they are. We
14 provide information to the applicant at that time. We
15 have an acknowledgement sheet and all applications and
16 compliance inspections where the, where we review the
17 acknowledgment sheet which is a condensed version of the
18 Federal Regulations Guide.

19 And by going through that, we're providing
20 information to the applicant at that time for his
21 compliance inspection, the same thing.

22 Q When you say that you review that condensed
23 version of the requirements of the regulations on the
24 acknowledgement sheet, could you give us just a rough
25 estimate of about how long you do that review, how much

1 time you spend with that applicant?

2 A When I'm going through the acknowledgement
3 sheet because, again, it's all attachments, information
4 concerning the forms that are listed on the
5 acknowledgement sheet, it usually takes me about two
6 hours to go through the actual acknowledgement stuff.

7 Q Now what about the compliance, you had
8 mentioned that you have education of the licensee during
9 the compliance time inspection, and you also do an
10 acknowledgement sheet during that process, correct?

11 A That's correct.

12 Q Is that about the same or about a different
13 amount of time that you spend in reviewing those basic
14 requirements with someone already licensed that you're
15 doing a compliance --

16 A It's usually about the same.

17 Q Were you involved at all in the application
18 inspection for Dick's Sporting Goods at this location
19 that we're talking about today in Memphis?

20 A Yes, I was.

21 Q Could you tell us about when that was?

22 A That was approximately about 2007.

23 Q Do you recall any details from that
24 qualification inspection?

25 A At that point in time, the store was just

1 opening or was about to open. They had brought in a
2 manager who was familiar with opening stores. And we
3 conducted the application inspection at that time.

4 Q Did you follow that process that you described
5 to us just now?

6 A Yes, I did.

7 Q And as a part of your duties, did you conduct a
8 compliance inspection of this same location of Dick's
9 Sporting Goods in Memphis?

10 A Yes, I did.

11 Q Do you recall about when you conducted the
12 compliance inspection?

13 A The compliance inspection was conducted some
14 time in June of 2013.

15 Q Do you recall exactly how it was determined
16 that you were going to conduct an inspection of this
17 licensee at that location?

18 A Inspections are chosen at random. They're not
19 something that's just picked. It's usually something
20 (indiscernible).

21 Q Does anyone advise of which inspections to
22 conduct as your assignment?

23 A My area supervisor advised the inspections.
24 And he gives out the inspections, he gives out the
25 assignments and from there, we conduct the inspections.

1 Q Did anyone else from ATF accompany you on
2 this inspection?

3 A No.

4 Q Could you recall about how long overall you
5 were on the premises to conduct that inspection?

6 A I'd say approximately four days.

7 Q And approximately when was the compliance
8 inspection?

9 A June 2013.

10 Q Tell us just in a very basic overview what
11 actions you took in conducting that compliance inspection
12 in June of 2013.

13 A Okay. Basically, I conducted an inventory of
14 the firearms, book to gun, gun to book; reviewed the
15 Acquisition and Disposition log; reviewed the ATF Forms
16 4473s. And that's basically what we do, make sure that a
17 copy of their license is there on the premises posted,
18 and that's basically what we do when we go in.

19 Q So what you're saying in this inspection it was
20 pretty much like your standard procedure in all
21 inspections?

22 A Exactly, standard compliance inspection.

23 Q So when you say you made a comparison of your
24 inventory found of firearms, gun to book and book to gun,
25 what records are you referring to?

1 A The Acquisition and Disposition log.

2 Q So how exactly do you make that comparison,
3 what do you compare?

4 A Okay. What I compare of the acquisitions and I
5 take the dispositions -- the open dispositions in the
6 Acquisition and Disposition log should equal the number
7 of firearms in inventory. Those open disposition entries
8 on the acquisition side as far as the information should
9 be identical to what's on the firearm itself as far as
10 the importer, manufacturer, model, serial number, caliber
11 of the firearm.

12 Q Is there any other information that's required
13 to be kept in the Acquisition/Disposition record other
14 than what you just described on the firearm?

15 A Yes. Date that the firearm was received, the
16 name and address or name and license number of the
17 Federal Firearms Licensee, wherever they're acquiring the
18 firearm from.

19 On the disposition side, it should be the date
20 of transfer; the name and complete address of the
21 individual or company that it's going to or the name and
22 FFL of the licensee that it's being transferred to; or if
23 they serialize their forms then the serial number of that
24 ATF Form 4473, that's the address.

25 Q On the Form 4473 that you referred to, could

1 you tell us what that form is?

2 A Okay. Firearms Transaction Record is used to,
3 used when a firearm is being transferred to a
4 non-licensed individual from a licensee to a non-licensed
5 individual.

6 The form must be completed by the non-licensed
7 individual, and the information on that form would also
8 have the information of the background check that has
9 been completed as well as information from the licensee
10 pertaining to the firearm being transferred, and the
11 licensee as well as the transferee certifying that they
12 have read and understand the notices and instructions and
13 definitions on the form.

14 Q Is a Firearms Transaction Record or for short,
15 the ATF Form 4473, is that required for all transfers
16 from a licensed dealer to a non-licensee?

17 A Yes, it is.

18 Q I'm going to show you now what I have marked as
19 Government Number 7.

20 MS. LANCASTER: And Mr. Barnes, I provided you
21 just a few minutes ago a copy of all of our evidence, and
22 they have markings for Government numbers. And I'll try
23 to make sure you have before you what it is we're talking
24 about at that moment. And if I don't, please let me
25 know, and we'll get time for you to look at it.

1 MR. BARNES: Well if I may, Mr. Reilly, is
2 this what you're referring to, Government 8 is an
3 indicated marking and --

4 MS. LANCASTER: Yes.

5 MR. BARNES: -- then on this document here --

6 MS. LANCASTER: It's got two pages so there's a
7 page before it.

8 MR. BARNES: Okay, Government Number 7.

9 MS. LANCASTER: Yes, correct.

10 MR. BARNES: Okay.

11 MS. LANCASTER: So just make sure if I don't
12 notice that you don't have the one that I'm referring to
13 that I give you time to locate that in your information
14 because we provided you some materials before today but
15 not marked as evidence so not in that order.

16 MR. BARNES: Right.

17 MS. LANCASTER: So we'll work with ones that
18 you have from today.

19 BY MS. LANCASTER:

20 Q I'm showing you what's marked as Government
21 Number 7 and ask you to take a moment to look at that.

22 A Yes.

23 Q Tell us what that is.

24 A This is a Report of Violations that's issued
25 out during the inspection and reviewed with the licensee

1 for any violations that were found during the
2 inspection.

3 Q Is that a part of a standard procedure in
4 conducting a compliance inspection?

5 A Yes, it is.

6 Q What information do you use in general as an
7 IOI to input information onto that Report of Violations?

8 A Okay. Basically the information will come from
9 the forms, ATF Forms 4473, or the Acquisition and
10 Disposition record. And the regulation cite comes out of
11 the Regulation Guidebook.

12 Q When you prepare a Report of Violations, at
13 what point in time is that done in regard to your overall
14 conducting a compliance inspection?

15 A Well, during the inspection process, the actual
16 completion of the report is usually completed at the end
17 of the inspection or reviewed with the licensee at the
18 end of the inspection.

19 But during the inspection, that's when
20 violations are actually noted and found. So during the
21 inspection, you come across certain issues well then
22 that's when you start to write them down and notate them
23 so that you can compile them at the end of the
24 inspection.

25 Q In this particular compliance inspection of

1 Dick's Sporting Goods, did you follow that same process
2 that you just described?

3 A Yes, I did.

4 Q And do you recall if you discussed any of these
5 violations during the compliance inspection prior to the
6 end of it with any person on site representing Dick's
7 Sporting Goods?

8 A Well, I may have discussed violation 1 possibly
9 at that time about the failure to properly record the
10 correct disposition, name and address for a stolen model.
11 I may have discussed that at that time because I'm trying
12 to find out the information at that particular point in
13 time.

14 The information about the straw purchaser, that
15 may have occurred towards the end of the inspection. I
16 can't say with certainty because, again, it dealt with a
17 straw purchaser, and I'm going through the, all approvals
18 and all denials and so I'm comparing at the same time.
19 And many times, it's not until actually the end of the
20 inspection when I can actually look at and verify the
21 information.

22 Q Did you review the information in the completed
23 Report of Violations with anyone representing Dick's
24 Sporting Goods at the end of your inspection?

25 A Yes, I did.

1 Q Do you recall with whom you reviewed that?

2 A Yes. There were three individuals who were
3 present at the closing. That was the loss prevention
4 manager, Mr. Karff (ph.); the acting store manager,
5 Mr. Pounds; and the district manager, Mr. Silva.

6 Q Did any person sign that Report of Violations
7 after your review?

8 A Yes.

9 Q Do you recall who signed it?

10 A Mr. Silva, the district manger; and Mr. Pounds,
11 the acting store manager.

12 Q And did you yourself sign it on behalf of ATF?

13 A Yes, I did.

14 (Whereupon, Licensee's
15 Exhibit Number 7 was marked
16 for identification.)

17 MS. LANCASTER: Just to clarify on the record,
18 the violation number 1 which was mentioned earlier is not
19 alleged so it's not a part of this matter. It was
20 mentioned as example of the review of the records and
21 then recording onto this form. But that's just a general
22 statement of what he did. That's not alleged so we're
23 not using that (indiscernible).

24 MR. BARNES: No, we understand that clearly
25 but, counsel, just a clarification. So Mr. Silva and

1 Mr. Pounds both signed the Report of Violations?

2 MR. MARTIN: Yes.

3 MR. BARNES: Okay, thank you.

4 MS. LANCASTER: I'm going to hold onto this
5 because it relates to other issues so we'll just go
6 through as you mentioned one by one on the allegations.

7 If you'll refer to number 3 listed on the
8 violations there, could you explain to us what number 3
9 concerns?

10 THE WITNESS: Okay. Number 3 is the transfer
11 of a firearm to a person, have reasonable cause to
12 believe that the person's prohibited. With that, there
13 were two forms. There was the approved ATF Form 4473 of
14 the individual, Laura Brady, and there was the denied ATF
15 Form 4473 of Jason Brady.

16 MS. LANCASTER: Okay. I'm going to show you
17 what's marked as Government Number 8.

18 And Mr. Barnes, I don't know if your copies are
19 stapled, mine are not. So it goes through three pages of
20 a 4473 and one page on the back of it marked Tennessee
21 Instant Check System.

22 MR. BARNES: Yeah.

23 MS. LANCASTER: All of that constitutes
24 Government Number 8 and then your next number is
25 Government Number 9 below that.

1 MR. BARNES: This is Government Number 9?

2 MS. LANCASTER: Yes, correct. That has a
3 little (indiscernible).

4 MR. BARNES: Right, got it.

5 MS. LANCASTER: Just so you have the accurate
6 information on what document we have.

7 BY MS. LANCASTER:

8 Q Okay, I'm showing you Government Number 8, and
9 I'll ask you to take a moment to look at that. Does this
10 relate in any way to the information that you just gave
11 us regarding violation number 3 on your Report of
12 Violations?

13 A Yes, it does.

14 Q Explain what Government Number 8 is in
15 regarding to the third violation on your Report of
16 Violations?

17 A Okay. This individual, Mr. Jason Brady,
18 completed this ATF Form 4473, a background check was
19 initiated and completed; the response was denied. The
20 Licensee attached the associated checklist with -- TICS
21 is the government agency that the background checks are
22 run (indiscernible).

23 They attach the response to the form indicating
24 also that the individual has a denied transaction on
25 11/6/2012. So the response was marked denied, they've

1 attached the response also from TICS which indicates
2 the date as well as the time of the individual.

3 Q Do you have any way knowing whether or not that
4 firearm that's described according to the Form 4473 was
5 actually transferred to Jason Wayne Brady or not?

6 A I have reasonable cause to believe that it was
7 transferred.

8 An individual -- there was a proceed response
9 for a Ms. Laura Brady on another ATF Form 4473 where it
10 was indicated that that firearm was transferred and
11 verified with the Acquisition and Disposition record
12 showing that that firearm was transferred to Ms. Laura
13 Brady; identical name, last name, identical address,
14 identical firearm and the same clerk.

15 Q You mentioned the Tennessee Instant Check
16 System, could you tell us what the requirement is under
17 the Gun Control Act for the instant check system?

18 A Okay. The requirement is that if a
19 non-licensed individual will be purchasing a firearm from
20 a licensee, a Federal Firearm Licensee, then that Federal
21 Firearms Licensee must complete a background check upon
22 that non-licensed individual. And they receive a
23 response back, the licensee will receive the response
24 back of either approved or denied.

25 Q And what is the importance of having the

1 instant check system for firearms licensees?

2 A To determine if the individual's prohibited or
3 not prohibited.

4 Q Is that a nationwide requirement for all the
5 Gun Control Acts?

6 A It is a nationwide requirement. The system
7 itself is the National Instant Check System. Tennessee
8 is what we call the point-of-contact state where we pull
9 that information from NICS, but we are considered a
10 point-of-contact state.

11 Q And does that operate the same as other states
12 which are not point-of-contact which use the National
13 Instant Check System?

14 A It operates the same. In addition, the
15 Tennessee Instant Check System also logs the serial
16 number of the firearm at the point of sale. And in
17 addition, they also charge a fee.

18 Q Did you obtain a log of the TICS transactions
19 for the date in question for Jason Wayne Brady's
20 attempted purchase?

21 A Yes, I did.

22 (Whereupon, Government's
23 Exhibit Numbers 8 and 9
24 were marked for
25 identification.)

1 BY MS. LANCASTER:

2 Q I'm going to show you Government 12, and I'll
3 apologize, we're going a little bit out of order in
4 our numbering so that we can keep the same order in your
5 allegations as requested.

6 Government Number 12, tell us how that relates
7 if it does to the transactions that you just described
8 earlier with Jason Brady and Laura Brady?

9 A Okay. What we see here, we have the individual
10 on November 12th, I'm sorry, November 6th, 2012,
11 Mr. Brady, denied at that time. And three transactions,
12 after three transactions have occurred on November 6th,
13 three TICS transactions, Ms. Laura Brady is approved. So
14 there are three transactions in between the time that
15 Mr. Jason Brady was denied and Ms. Laura Brady was
16 approved.

17 Q Did any of the records that you reviewed give
18 you any indication of the time lapse in between the
19 attempt by Jason Brady and then the successful purchase
20 by Laura Brady?

21 A Yes.

22 Q What documents did you obtain that information
23 from?

24 A Okay. The document that I obtained that
25 information from was attached to the back of the ATF Form

1 4473. It is the print out of the TICS response from
2 the Tennessee Instant Check System.

3 Q So when you say you looked at that Tennessee
4 Instant Check System, that was for both of those
5 Form 4473s?

6 A That is correct.

7 (Whereupon, Government's
8 Exhibit Number 12 was
9 marked for identification.)

10 MS. LANCASTER: Bear with me just a minute
11 here.

12 MR. BARNES: That's on Mrs. Brady's exhibit.

13 MS. LANCASTER: Correct.

14 BY MS. LANCASTER:

15 Q I'm showing you what is marked as Government
16 Number 10, and I'll ask you to take a moment to look at
17 that please and that is the Laura Brady four pages. Tell
18 us how that relates if it does to your information there
19 was reason to believe there was a transfer to, in
20 actuality, Jason Brady?

21 A Okay. On this form again, Ms. Brady, on this
22 form, this 4473, you have the same last name, identical
23 address, identical firearm, signed by the same clerk on
24 the same day of November 6th, 2012. The only difference
25 is that this form has an approved response approximately

1 eight or nine hours later.

2 Q Based on your training and your experience what
3 led you to conclude that the Licensee had reason to
4 believe that this was a false purchase or straw purchase?

5 A Well, as I stated before, you have the
6 identical last name, address, firearm, signed by the
7 clerk for both forms, same clerk on both forms. You have
8 attached to the form a sign-off sheet from the store
9 indicating that the individual has looked at the denials
10 and the approvals, the denials for this (indiscernible).

11 (Whereupon, Government's
12 Exhibit Number 10 was
13 marked for identification.)

14 BY MS. LANCASTER:

15 Q I'm showing you Government 11, and I'll ask you
16 to take a moment to look at that, please. Tell us what
17 that document is.

18 A Okay, this is a sign-off sheet that the store
19 uses for having their associates, their employees,
20 utilize when they're before a, well, after a transfer has
21 occurred making sure that everything is in order for the
22 ATF Form 4473.

23 It's a series of reviews reviewed by the
24 individual transferring the firearm going all the way
25 through upper management of the store.

1 Q Is that form required at all by the Gun
2 Control Act?

3 A No, it isn't.

4 Q What is significant in your training and
5 experience on that form related to the violation that you
6 concluded had occurred?

7 A Well, on here in step 1 under selling associate
8 which is the same individual who completed the Form 4473
9 for Mrs. Brady and Mr. Brady, it states here use the
10 firearms review template to verify Sections A and B on
11 the Form 4473 are complete and review the denied delay
12 log for possible straw purchase. If all the information
13 is correct and there is no evidence of straw purchase,
14 acknowledge by signing in the space provided, complete
15 step 1 before initiating the background check.

16 And then it goes further down again selling
17 associate again reviews even further information and then
18 upper management signs and dates the form, I mean, signs
19 off on here and dates this sign-off sheet.

20 Q So why is it significant that the clerk signed
21 that form on the clerk's portion of it indicating that it
22 was a lawful sale?

23 A Okay. It's significant because what they're
24 stating is that yes, they have reviewed and by their
25 review, everything was fine.

1 Q And what would they have reviewed in order to
2 sign on Government 11?

3 A Okay. What they should be reviewing and what
4 they should review is the denied form verifying the
5 information there as well as the proceed form also,
6 verifying that the individual's identical to, last name
7 is identical, address is identical, the firearm is
8 identical.

9 Q Where did you find Government 11 in your review
10 of the records?

11 A This was attached to the form of Ms. Laura
12 Brady.

13 Q By that you mean the Form 4473?

14 A That's correct, Form 4473.

15 Q When a denial is received in Tennessee from
16 TICS, when a denial is received, what is a licensee
17 required to do according to the Gun Control Act?

18 A They are to file those forms away in a separate
19 file in either alphabetical or chronological order.

20 Q And do you have any idea of the purpose in
21 maintaining a file of the denials in the alphabetical or
22 chronological order?

23 A The purpose is to be able to review the forms
24 in case an individual or, well, an individual other than
25 the person who was denied may attempt to purchase a

1 firearm that they were trying to purchase when they
2 initially came into the store and the background check
3 was denied.

4 Q So what is the importance of having the correct
5 person as the buyer on an ATF Form 4473?

6 A It really goes back to the licensee maintaining
7 good records. The license is the custodian of the
8 records. Any time that a trace request is made of the
9 licensee, they have to go to their records because,
10 again, they're the custodian of the records and provide
11 that information to ATF.

12 So if you have information in there that's not
13 correct whereas the actual purchaser of the firearm is
14 not in there, is not in the firearm, it's not in the
15 records, then your recordkeeping is not correct. And as
16 far as tracing purposes, it makes it difficult if not
17 impossible to trace a firearm.

18 Q Could you explain the process by which a trace
19 of a firearm is conducted in general?

20 A Okay. When a firearm is -- when the
21 information from a firearm is given or taken off the
22 firearm which would be the make, model, serial number,
23 and submit it by law enforcement, well then the tracing
24 center follows the distribution chain, the chain of
25 distribution, from the manufacturer because, again, the

1 manufacturer's marks of identification or imports marks
2 of identification will be on the firearm itself. And
3 they will follow that through the distribution chain from
4 the manufacturer to the wholesaler or retailer to the
5 purchaser which would be, or maybe a non-licensed
6 individual.

7 And, again, once it leaves the hands of a
8 non-licensed individual well then as far as the
9 recordkeeping requirements go, that's as far as the
10 recordkeeping requirements will, as far as the
11 information for recordkeeping will take you.

12 The final person will be the non-licensed
13 individual who is not required to maintain any type of
14 records.

15 Q Do those records also assist the licensees in
16 determining that firearms do not go into the hands of
17 prohibited person?

18 A Yes, they do.

19 Q In what way?

20 A Okay. First of all, with denials, when you're
21 looking at the records, as far as with denials, you're
22 trying to verify that you're not going to be selling or
23 transferring firearms to someone other than the actual
24 person.

25 In question 11(a), they ask are you the actual

1 buyer or, are you the actual buyer of the firearm
2 listed on the form. Question 11(a), if you are the
3 actual purchaser of the firearm, buyer of the firearm,
4 you will always answer yes, and that information is also
5 expanded on the information notices and instruction
6 sections.

7 If the individual is not the actual buyer and
8 they answer yes, well, then they falsified the form. If
9 an individual who has been denied and, again, the denied
10 form is maintained on file with the licensee, with the
11 licensed dealer. And then some other individual, another
12 individual, such as an individual with possibly the same
13 last name, same address, same type of firearm attempts to
14 purchase a firearm, well then by looking through the
15 denied file, you'll see that the individual that you're
16 transferring or who you're possibly transferring to will
17 be prohibited from would be actually a transfer to a
18 prohibited person because the individual is not the
19 person that it is actually, that is the actual purchaser
20 of the firearm itself.

21 Q So based on your training and experience, who
22 was the actual buyer of the firearm concerned in the
23 Jason Brady and Laura Brady transactions?

24 A Mr. Jason Brady.

25 Q This was based on the factors that you

1 discussed earlier?

2 A That's correct.

3 Q What about the description of the firearm
4 itself, was that the same, similar or different?

5 A It was identical.

6 Q Did it have the same serial number?

7 A Yes.

8 Q And what about the information that was
9 recorded into the Acquisition and Disposition record?

10 A That information had the name of Ms. Laura
11 Brady.

12 (Whereupon, Government's
13 Exhibit Number 11 was
14 marked for identification.)

15 MS. LANCASTER: All right. All of the 4473
16 information that we've discussed goes to one and three on
17 here, on the transfer to person with reason to believe
18 prohibited, and three being the false information on the
19 Form 4473 in the name of the buyer.

20 So I have one document that's related to the
21 false information on Acquisition/Disposition record which
22 is Count 2 of the allegations.

23 HEARING OFFICER: Government Exhibit 8 entered
24 into the record. Government Exhibit 9 entered into the
25 record. Government Exhibit 11 entered into the record,

1 and Government Exhibit 12 entered into the record.

2 (Whereupon, Government's
3 Exhibit Numbers 8, 9, 11
4 and 12 were received into
5 evidence.)

6 HEARING OFFICER: Does that cover it for one?

7 MS. LANCASTER: Yes. That's all for one, and
8 it'll also be for three as well.

9 HEARING OFFICER: Is that it for number 1 from
10 the Government?

11 MS. LANCASTER: Yes.

12 HEARING OFFICER: Mr. Barnes.

13 CROSS EXAMINATION

14 BY MR. BARNES:

15 Q Mr. Williams, thank you. I have some questions
16 to go over from your testimony and then I have some other
17 questions to follow up with so let me go back.

18 You testified earlier that you had a close-out
19 conference with the Dick's employees, is that correct,
20 Mr. Karff, Ponz and Silva?

21 A That's correct. Pounds.

22 Q Pounds?

23 A Yes.

24 Q And at that close-out conference, you did raise
25 the issue of violation number 1 or alleged count number 1

1 in the revocation, the straw purchase?

2 A Yes.

3 Q How did you describe that then to the Licensee?

4 A I think --

5 Q Let me ask it another way. Was the Licensee
6 surprised?

7 A Well, as far as when we say surprised it's like
8 they didn't know. They had no idea that that had
9 occurred.

10 Q Okay. And at that time, did you ask to speak
11 to the first person on Government's Exhibit, I believe
12 it's number 12 if I'm correct?

13 A The selling associate?

14 Q That's correct, Mr. Krueger.

15 A I did, and they said he didn't work for the, no
16 longer works for the (indiscernible).

17 Q Okay. But you wanted to speak to him, but you
18 did not have an opportunity to do so?

19 A Exactly.

20 Q Okay. So it's your testimony then that the
21 store manger, the regional, or the district manager, all
22 three Dick's licensee or Dick's employees were, did not
23 know that this had occurred; is that correct?

24 A Yes. The three that were present at the
25 closing and who assisted me during the inspection.

1 Q Did you ever speak to Mrs. Brady or Mr. Brady
2 or attempt to interview them?

3 A No.

4 Q I want to refer to Government's Exhibit, again,
5 Number 12, the TICS log; and let me make sure I've got
6 that. You're familiar with this document, sir, correct?

7 A Yes.

8 Q Okay. This TICS log, would this be a log that
9 Mr. Krueger or any store personnel would have seen
10 contemporaneous with the transaction in question?

11 A No, it isn't.

12 Q Okay. Who has access to this log normally?

13 A Who has access? The Tennessee Instant Check
14 System, and they provide us with a copy of the log.

15 Q Okay. So this is not something that a licensee
16 can just call TICS and ask for, is that correct?

17 A That's correct.

18 Q Now on Government's Exhibit Number 11 that you
19 referred to which is the sign-off sheet, here on the
20 sign-off sheet it says selling associate, use the
21 Firearms Review template to verify if Sections A and B on
22 the Form 4473 are complete and review the denied/delay
23 log for possible straw purchases, okay.

24 Now, can you cite, sir, anywhere in the
25 regulations where the licensee is required to maintain

1 this kind of recordkeeping?

2 A No.

3 Q Can you cite, sir, anywhere in the regulations
4 where the licensee is required prior to the transfer of a
5 firearm on an approved 4473 to go back to the separate
6 file maintained under the Gun Control Act and review the
7 denials file? No matter what day a purchase is being
8 made and no matter how far back the denials go, can you
9 cite anything in the regulation that requires the
10 licensee has a check procedure under the regulations to
11 do that?

12 A As a check procedure, no, I can't.

13 Q Sir, did you take a look at the Dick's
14 denied/delay log yourself?

15 A No, I didn't.

16 Q Okay. So you wouldn't have been aware one way
17 or another whether or not Mr. Brady's attempt to purchase
18 a firearm would have been entered into that log, is that
19 correct, is that your testimony today?

20 A I look at the forms. I didn't look at the
21 denied log.

22 Q Mr. Williams, I think it's established by your
23 counsel, by Government's counsel, that you've had
24 extensive training, correct, from FLETC and on-the-job
25 training?

1 A Yes.

2 Q Now you referred briefly to the instructions on
3 the Form 4473. With regard to those instructions
4 regarding what you refer to as I believe question 11(a)
5 on the 4473, is that the correct question --

6 A That's correct.

7 Q -- are you the actual buyer?

8 A Are you the actual buyer of the firearm.

9 Q Right. With regard to that question,
10 specifically, are there any exceptions listed on the
11 instructions on answering that question yes? In other
12 words, are different scenarios given on where a yes is an
13 appropriate answer?

14 A If the individual, and it states right there in
15 section 11(a), if the individual's picking up a repaired
16 firearm and they're not the individual who brought the
17 firearm in, well then they're not required to answer
18 11(a). They can leave it blank.

19 Q Are there any other scenarios that are listed
20 on the instructions that are acceptable for answering yes
21 to 11(a)?

22 A In the instructions, notices and definitions
23 refers to if the firearm is being given as a gift then
24 the individual should list, should answer yes to
25 question 11(a).

1 Q So who makes the determination of that intent
2 for a gift; is that up to the licensee, or is that up to
3 the person who's appearing before the licensee?

4 A No, it would be the individual --

5 Q Who's appearing before the licensee.

6 A And also, but the licensee, because the
7 licensee -- first of all, the licensee is the first line
8 of defense just to make sure the firearm's kept out of
9 prohibited persons.

10 So if an individual who appears before the
11 licensee within say a reasonable period of time, and I
12 would definitely say a day would be a reasonable period
13 of time, appears before the licensee and they attempt to
14 purchase a firearm, they are denied. And then
15 subsequently later on, someone else with the same last
16 name, same address, same type of firearm attempts to
17 purchase that same firearm then right there, there would
18 be an indication of a reasonable cause to look at that
19 individual and say hey, I have reason to believe that
20 you're not purchasing this firearm for yourself.

21 Q Well let's explore that because I think that's
22 an excellent point.

23 In your experience when the government is
24 urging -- you said first line of defense so let's talk
25 about the first line of defense and let's talk about what

1 the government's purpose is in trying to prevent straw
2 purchases.

3 Every time that there may be a suspicion that a
4 straw purchase is occurring or that there are elements
5 that might give rise to a straw purchase, it's not
6 necessarily a straw purchase, correct? In other words,
7 the licensee in your mind has an obligation to vet
8 further?

9 A Well, what we're talking about, we're talking
10 about something that is, it's showing, it's in your face,
11 it's something that (indiscernible).

12 Q Well sir, all I'm asking is does every scenario
13 that gives even a whiff of a potential straw purchase, is
14 that necessarily a straw purchase?

15 A Every scenario?

16 Q Yeah, that might -- yeah, right.

17 A No, I wouldn't say every scenario.

18 Q Right. And so would you not agree that the
19 licensee in your mind at least when they're put on notice
20 of a potential straw purchase, they should make further
21 inquiry at least?

22 A I would agree with that.

23 Q Going back to the record of violations or the
24 Report of Violations, there is, and we don't want to get
25 the numbers mixed up, but the first violation was for an

1 incorrectly recorded disposition of a firearm?

2 A That's correct.

3 Q Just they transposed the name of a person? Did
4 they get the serial number wrong or, you know, I'm just
5 trying to figure out what that violation was.

6 A It was the disposition name and address.

7 Q So the underlying transaction was correct?

8 A Right.

9 Q But they didn't get --

10 A The name --

11 Q -- maybe they left off the middle name or
12 perhaps something like that?

13 A Well I don't know exactly what the information
14 as far as the name and address. They may have actually
15 left off the name and address, but the violation was for
16 failure to properly record the correct disposition name
17 and address.

18 Q Other than the rest of the violations in that
19 Report of Violations, if those had not existed for you as
20 an investigator and you had completed this inspection at
21 the Wolfchase store with just that one violation, in your
22 mind, would that have been a decent to fairly good
23 outcome for a licensee?

24 A As far as an inspection of a licensee?

25 Q Yes.

1 A Yes.

2 Q Okay. I now want to go onto some questions
3 that we had for the Government's witness.

4 The revocation notice that Dick's received
5 charged a violation of 18 U.S.C. 922(d) and 27 C.F.R.
6 478.99(c) stating that Dick's transferred the Mossberg
7 Maverick, I'm not going to repeat the serial number, to
8 Wayne Brady.

9 The Report of Violations cited the same
10 regulatory scheme but stated that after Mr. Brady was
11 denied, Mrs. Brady purchased the same firearm. Did
12 Dick's actually transfer the firearm to Mr. Brady or
13 Mrs. Brady, what's your testimony?

14 A Did Dick's actually transfer the firearm --

15 Q Yes. Did they transfer dominion and control of
16 the firearm across their store counter to Mr. Brady or
17 Mrs. Brady?

18 A Okay. Now the clerk who was at the time --

19 Q Mr. Krueger.

20 A Yes. He handed the firearm to Mrs. Brady.

21 Q So that's giving up dominion and control to
22 another human being, isn't it?

23 HEARING OFFICER: You asking him to make a
24 legal determination?

25 MR. BARNES: Well I --

1 THE WITNESS: He handed the firearm to
2 Mrs. Brady. The clerk handed the firearm to Mrs. Brady.

3 BY MR. BARNES:

4 Q So who was the firearm transferred to,
5 Mrs. Brady or Mr. Brady?

6 A The clerk handed the firearm to Mrs. Brady.

7 Q All right, so you're -- at this point, you
8 can't say who the transfer was to?

9 A No.

10 Q You just say it was physically handed to --

11 A No, what I can say is that there was reasonable
12 cause to believe that the actual purchaser of the firearm
13 was Mr. Brady.

14 Q Then if Mrs. Brady actually received, if she
15 received the firearm in question, physically received the
16 firearm in question, please explain how a Dick's transfer
17 of a firearm to Mrs. Brady after she completed the 4473
18 and underwent a TICS check for which a proceed response
19 was received violated what you cited which was 478.99(c)?

20 A Okay. First of all, what we're getting here to
21 is what we call a straw purchase, a straw purchase where
22 an individual who may or may not be prohibited from
23 possessing a firearm uses another person to obtain the
24 firearm for them where the actual purchase of the firearm
25 is the individual who was using the straw person to

1 obtain the firearm for them.

2 Mr. Brady, Mr. Jason Brady, stated on the form
3 that he wanted to purchase this particular firearm on
4 such and such a date, he was denied. Mrs. Brady came in
5 subsequently, later on that day, and attempted to
6 purchase that particular firearm on that day stating that
7 she was purchasing the firearm for herself.

8 So what we have here is an individual who
9 falsified the form which in turn made the Licensee's
10 records incorrect, and the actual buyer or actual
11 purchaser is Mr. Jason Brady.

12 Q Mr. Williams, going back to your training at
13 FLETC, were you instructed on the concept of willfulness?

14 A We've had discussions on willfulness with ATF.

15 Q Okay. And how do you define willfulness for
16 purposes of the Gun Control Act?

17 A Okay. Well as far as defining willfulness,
18 there's nothing in the regulations that define
19 willfulness.

20 However, in the letter that was issued out to
21 you and your client -- if you refer back to the
22 explanation of the hearing process, on the last page of
23 the information of the hearing process, it refers to the
24 last paragraph, first column, willful violations are
25 those violations meeting statutory requirements for

1 denial or revocation. Willfulness as defined by the
2 courts, and again, by the courts means for purposeful
3 disregard of a known legal entity, known legal duty or
4 plain indifference to a licensee's legal obligation.

5 And if you read further, it'll state that ATF
6 is not required to prove you intended to violate the law
7 only that you knew your legal obligation as a licensee.

8 Q Again going back to your training at FLETC, did
9 anybody at FLETC --

10 MS. LANCASTER: For the record, let's just
11 identify where he was reading from; it's Government
12 Number 5.

13 MR. BARNES: That's fine, thank you.

14 BY MR. BARNES:

15 Q Going back to your training at FLETC, were you
16 ever instructed at FLETC that the statute was amended in
17 1986 by the Firearms Owners Protection Act, and that the
18 legislative history talks about why the amendment was
19 made for willfulness.

20 And in section 103 which amended 18 U.S.C.
21 923(e), it's clear in the legislative debate that the
22 purpose of this change is to ensure that licenses are not
23 revoked for inadvertent errors or technical mistakes.

24 So is that concept of inadvertent error or
25 technical mistake ever brought out in your training at

1 FLETC?

2 A I don't remember.

3 Q Let's go back to the recordkeeping that you did
4 review at Dick's.

5 If an FFL maintains an extra regulatory record
6 like the proceed or the denial log that Dick's has which
7 is referred to in one of the Government's exhibits, the
8 certification statement that we looked at earlier in your
9 testimony, and then the employees fails to make a record
10 in that store so that a previously denied person could
11 not be determined, would that make then a subsequent sale
12 to another person who had the same last name and lived at
13 the same address a violation of the Gun Control Act or
14 its regulations?

15 In other words, to put it simply, if we can
16 show, and we will show, that Mr. Krueger did not make an
17 entry in the denial log and the procedure, the internal
18 control procedure, in the store was for Mr. Krueger to
19 come back in and check that denial log to prevent straw
20 purchases, and indeed we'll present other evidence today
21 about other internal controls to prevent straw purchases
22 on a system-wide basis in this are of Tennessee, if he
23 went and looked at that log and saw no last name, Brady,
24 in the log and then proceeded to make the sale or the
25 transfer to Mrs. Brady, would that still in your opinion

1 be a straw purchase, enabling a straw purchase?

2 A Could you just repeat that again, please?

3 Q You presented, or counsel for the Government
4 introduced an extra regulatory document not required to
5 be kept by the Gun Control Act which --

6 A Are you referring to their sign-off sheet?

7 Q I am referring to sign-off sheet.

8 A Okay.

9 Q And on that sign-off sheet, step number 1 which
10 you went over, clearly refers to the retail personnel
11 going to the denial log to review the denial log. The
12 purpose of that review as stated on the Government's
13 introduced exhibit is to ascertain whether or not there
14 might be a possibility of a straw purchase; you would
15 agree with that, correct, that's what it says anyway?

16 A Right, I would agree.

17 Q Right. If Mr. Krueger went to that log and as
18 a result of his own inadvertent error had failed to
19 record Mr. Jason Brady on that log, but still checked it
20 anyway, and then went and made the disposition to
21 Mrs. Brady, would that still be a straw purchase in your
22 mind, in your opinion?

23 A If he, where you say if he failed --

24 Q Mr. Krueger failed to put in, he had failed to
25 put in the information about Jason Brady in the denial

1 log but as required by step number 1, he went to the
2 log as he was making a gun transfer and checked the log
3 and saw that there was no last name of Brady there; it
4 was due to his own error, but it wasn't there, he had no
5 consciousness, but assume for purposes of this question
6 he had no consciousness, and then he still went made the
7 disposition to Mrs. Brady, would that still be enabling
8 the straw purchase?

9 A Two things when you refer to that question.
10 First of all, as far as a disposition log, a denial log,
11 a licensee is required by regulations to maintain the
12 forms either in alphabetical or chronological order for
13 all the denials.

14 Q And you found those did you not at the store?

15 A Yes, I did.

16 Q And they were in good order, were they not?

17 A As far as I can remember.

18 Q Yes.

19 A Now, you have those forms, those forms are
20 there for a reason. Not only that, you have the same
21 individual who initiated the transaction at the very
22 beginning. So you have the same individual and you have
23 the denial forms.

24 So as far as a denial log, I mean, they could
25 have whatever denial log they want, I mean, that's fine,

1 that's great. But a denial log is only as good as the
2 information's that in it. But still the records that
3 were required and that you're required to have are the
4 denied files, denied forms.

5 Q Right, we all agree on that, sir. But let me
6 ask you this. Are you aware of the Don't Lie For the
7 Other Guy program?

8 A Yes, I am.

9 Q Right, and would it be your opinion that the
10 purpose of that program is to create a partnership
11 between ATF and the trade in order to prevent the illegal
12 diversion of firearms for whatever reason, straw
13 purchases, for whatever reason?

14 A Well I can't say for the program now, but I
15 remember when it was initiated, and it was initiated as a
16 partnership between ATF and the NSSF.

17 Q Right, and do you recall as a part of that
18 initiative by ATF and by the trade that ATF encouraged
19 the industry to come up with systems that would help spot
20 straw purchase transactions outside of just maintaining
21 the denial 4473s?

22 A Okay. I don't know about that, but I do know
23 that ATF has always encouraged licensees to always be
24 vigilant and be aware of straw purchases and anything
25 pertaining to that matter.

1 Q So would it be your opinion, sir, that if any
2 retailer including my client, Dick's, had developed a
3 system --

4 HEARING OFFICER: Mr. Barnes, let's keep it,
5 let's tie it back into Count 1. I think we're straying
6 away from here.

7 MR. BARNES: Okay. Well --

8 HEARING OFFICER: You're asking him about
9 opinions of what the industry should do in partnership
10 with the government and all that. Let's stick to
11 Count 1, please.

12 MR. BARNES: Okay, Mr. Reilly. I'm just trying
13 to focus in on the system that was being maintained to
14 spot straw purchases. Dick's -- and I'm going to ask
15 counsel this. You did say that your documents were
16 supporting the other counts in the revocation, the first
17 exhibits that you just entered into the record I think
18 Group 1.

19 MS. LANCASTER: Counts 1 and 3 are both related
20 so the Hearing Officer requested that we do Allegation 1
21 and Allegation 2 then Allegation 3. And this is actually
22 intertwined with one and three.

23 MR. BARNES: So are you going to do further
24 direct with Mr. Williams on Count 2?

25 MS. LANCASTER: Yes, but it'll be very short

1 because it also relates to the other things. The only
2 thing I'm doing on Count 2 is I'm adding the
3 Acquisition/Disposition record and the name on it. But
4 it's also based on these other, all the other bases.

5 MR. BARNES: Well, I'll come back to two and
6 three then.

7 HEARING OFFICER: We don't have to go in the
8 order of one, two, three; if you want to go one, three
9 two or whatever, that's fine. But I'm just saying, we
10 pause at the end of each count to afford the opportunity
11 for cross.

12 MS. LANCASTER: Sure. Yeah so it doesn't get
13 so far a field.

14 I'm just saying that one and three are pretty
15 much the same, and we're not going to be going through a
16 repetition on three because we've already said it on one.

17 HEARING OFFICER: Understood.

18 MR. BARNES: Okay. Well, let me stick on one.

19 BY MR. BARNES:

20 Q Mr. Williams, how do you know that Dick's
21 employees knew the gun was going to be transferred by
22 Laura Brady to Wayne Brady?

23 A How do I know?

24 Q Yes.

25 A Well, as I said it before, you have the

1 individual who was denied initially at the beginning of
2 the day and then you had another individual with the
3 identical last name, address, firearm by the same person,
4 completed by the same person, within so many hours so
5 there was reasonable cause to believe that that firearm
6 was going to be in the hands of Mr. Jason Brady and not
7 Ms. Laura Brady.

8 Q Is it your position that a straw purchase was
9 still enabled even if that weren't the case, that
10 Mrs. Brady bought a gift or bought the gun for herself
11 and maintained dominion and control over the firearm?

12 A Well, like I stated, there was reasonable cause
13 to believe that this is what occurred.

14 Q Okay. So is it your position that a licensee
15 should lose their license even if there's no underlying
16 straw purchase? It's just simple question, sir.

17 HEARING OFFICER: Yeah, but it's not a question
18 that he -- Mr. Williams, did you make the determination
19 that you were going to revoke the license?

20 THE WITNESS: I'm sorry?

21 HEARING OFFICER: Did you make the
22 determination that this license was going to be revoked?

23 THE WITNESS: As far as -- are you saying
24 that --

25 HEARING OFFICER: Who made the decision to

1 issue a Notice of Revocation?

2 THE WITNESS: Well, that decision as far as --
3 is that what you're asking?

4 HEARING OFFICER: Yes. I'm asking who made the
5 decision in the Nashville Field Division to issue a
6 Notice of Revocation. Would that be the Director of
7 Industry Operations?

8 THE WITNESS: As far as final decision?

9 HEARING OFFICER: Yes.

10 THE WITNESS: As far as once everything has
11 been determined?

12 HEARING OFFICER: No, sir. To issue the
13 initial Notice of Revocation that we're here today, yes.

14 THE WITNESS: To issue the notice?

15 HEARING OFFICER: Right.

16 THE WITNESS: Okay. I'm trying to, I was
17 trying to understated exactly what you were saying but to
18 issue the notice then yes, it is the Director who makes
19 the final decision to issue the Notice of Revocation.

20 HEARING OFFICER: Okay.

21 MR. BARNES: Mr. Williams, is it a violation of
22 the Gun Control Act for a non-prohibited person who owns
23 firearms to live at the same address as a prohibited
24 person, assuming they maintain dominion and control over
25 the guns?

1 MS. LANCASTER: Could you use a little more
2 common language than dominion and control.

3 THE WITNESS: Well --

4 MR. BARNES: Okay.

5 BY MR. BARNES:

6 Q A lawful, we have a lawful gun owner in one, in
7 a house --

8 A In a house.

9 Q -- and there's a person who may not have access
10 to have firearms for any number of reasons, can the
11 lawful gun owner --

12 A They don't have access or control of the
13 firearm?

14 Q Correct.

15 A Okay. Then no, there shouldn't be any issue
16 with that.

17 Q Thank you. Does an FFL have a legal duty to
18 maintain a training manual, standard operating procedures
19 and/or training for employees under the regulations?

20 A Under the regulations?

21 Q Yeah.

22 A No, they don't have -- no, they would
23 (indiscernible).

24 Q Does an FFL have a legal duty to maintain a
25 multiple-sale tracking system, not multiple handgun

1 reporting, but a system that tracks buyers in general?

2 A No.

3 Q Can you tell me how the Dick's employees
4 behaved during the inspection?

5 A They were cordial, very helpful, friendly and
6 professional.

7 Q I don't want to tread back over old territory,
8 but how were the stores' other compliance operations or
9 their general compliance, firearms compliance, operations
10 in general? I mean, did they appear to be organized with
11 their inventory and other things that, I mean, you were
12 doing book to gun and gun to book, did that go fairly
13 smoothly?

14 A Everything else appeared to be (indiscernible).

15 Q In your experience, do you examine other Dick's
16 stores in Tennessee besides Wolfchase, do you do audits
17 and inspections?

18 A I can't think of another one that was assigned
19 to me as a compliance, but I do remember assisting on one
20 recently within the past 12 months.

21 Q During the course of your inspection, did you
22 check on whether or not they had any unanswered trace
23 requests from that store? Was that a part of your
24 inspection?

25 A Yes.

1 Q And how did they do there?

2 A There were no issues.

3 MR. BARNES: All right. Thank you, Mr. Reilly,
4 I'll hold the rest of my questions.

5 HEARING OFFICER: Ms. Lancaster, redirect?

6 MS. LANCASTER: Briefly.

7 REDIRECT EXAMINATION

8 BY MS. LANCASTER:

9 Q We talked about the TICS log which is
10 Government Number 12, and it was established that the
11 Licensee would not have access to this particular
12 document, correct?

13 A That's correct.

14 Q Would the Licensee, however, have access to all
15 the information that is recorded on Government 12?

16 A Well, as far as having access, TICS sends out a
17 bill to all their licensees monthly which has all of
18 their approvals and denials that they can check against.

19 I don't know if that has the, what other
20 information there may -- there's this listing, I know you
21 have a transaction number, I think you have a response.
22 So I know they send out a monthly bill that has
23 everything that occurred within that month.

24 And again, the printouts, the TICS printouts,
25 when they conduct a background check.

1 Q When you said the printouts, what
2 specifically are you referring to?

3 A The response sheets for approval or denials.

4 Q Those are those papers that were attached --

5 A Attached to (indiscernible).

6 Q -- to the Forms 4473 that we saw earlier, one
7 for Jason Brady that showed denial and one for
8 Laura Brady that showed approval?

9 A Right, correct.

10 MS. LANCASTER: That's all.

11 HEARING OFFICER: Okay. Government can proceed
12 in either direction they want.

13 MS. LANCASTER: Do we want, I can --

14 HEARING OFFICER: We've been at it for an hour
15 and a half so (indiscernible) a break. If someone needs
16 a break, they just got to let me know; it's not a big
17 deal.

18 MR. BARNES: It just depends. I was going to
19 suggest a bathroom break, but if counsel is going to be
20 relatively --

21 MS. LANCASTER: Well, I would say this is what
22 we have going on here and we can decide.

23 It's going to be really quick to present
24 Allegation Number 2 which is going to be just adding the
25 A&D record to what's already been entered into evidence

1 and then just a few general things.

2 So it's going to be fairly fast for our
3 remaining presentation, and we're fine to take a break
4 now and come back and do 15-20 more minutes and then
5 whatever cross you have so whatever preference is.

6 MR. BARNES: Let me ask if my group needs a
7 break 'cause I'd rather just get the 15 minutes in then
8 we can come back and do the defense.

9 HEARING OFFICER: Okay.

10 MS. LANCASTER: That way you'll have time to
11 confer with your client and go forth if you wish.

12 MR. BARNES: Yes.

13 MS. LANCASTER: All right. And Allegation
14 Number 2 is the false information in the
15 Acquisition/Disposition record as to the purchaser.

16 BY MS. LANCASTER:

17 Q I'm showing you what's marked as Government
18 Number 9, and I'll ask you to take a moment to look at
19 that; and also if you would look back at Government
20 Number 7 which we've not entered yet, your Report of
21 Violations, the second violation that you listed on that
22 and tell us if it does, how Government Number 9 would
23 relate to the second violation you recorded onto the
24 Report of Violations?

25 A Okay. What this, this regulation refers to

1 recordkeeping. The information that's listed on the
2 Acquisition and Disposition log is Ms. Laura Brady, and
3 Ms. Laura Brady as far as the actual purchaser is not the
4 actual purchaser. So what we have here is the
5 information in the A&D log book of the individual is not
6 the actual purchaser of the firearm.

7 Q What exactly is recorded on Government Number 9
8 as the purchaser?

9 A Laura Brady.

10 Q And based on all the other documentation that
11 you've reviewed in accordance with Allegation 1 and 3
12 that we've already talked about, who should be listed
13 there as the actual purchaser?

14 A Mr. Jason Brady.

15 MS. LANCASTER: All right. I'll enter into
16 evidence at this time Government 7 and 9.

17 HEARING OFFICER: Government Exhibits 7 and 9
18 entered into the record.

19 (Whereupon, Government's
20 Exhibit Numbers 7 and 9
21 were received into
22 evidence.)

23 MS. LANCASTER: And I have some more questions
24 that really relate kind of to everything here. I'll
25 briefly go through.

1 BY MS. LANCASTER:

2 Q If you look at Government 13, that's the
3 acknowledgement. Almost at the end; yeah, that's the
4 one, you got it right there. It's that one, first page.

5 A Okay.

6 Q Tell us what that document is?

7 A Okay. This is the acknowledgement of Federal
8 Firearms Regulations. This form is completed at every
9 application and every compliance inspection. It's a
10 review of the topics that are listed in the Federal
11 Firearms Regulations book as well as rulings. And
12 there's also a page number for those who are not familiar
13 yet with using the regulation site itself.

14 At the very end, we ask the licensee or
15 applicant to sign and date the form stating that they
16 have reviewed the form, also checking or initialing the
17 boxes indicating all the sections that they have
18 reviewed, that we have reviewed together.

19 And at the very end of it, end of the second
20 page, we have our website where we inform the licensee or
21 applicant where they can go and obtain even more
22 information as well as our contact numbers, our direct
23 lines to the IOI who conducted the inspection or
24 application inspection as well as the area office numbers
25 and additional phone numbers to the licensing center and

1 also other additional phone numbers.

2 Q When you say that it has page numbers on there
3 and that's referring to the *Federal Firearms Regulations*
4 *Reference Guide*, are you referring to what we normally
5 call the white book; *ATF Publication 5300.4*, September,
6 2005?

7 A Yes.

8 Q And is this document related to the explanation
9 that you gave earlier of your review of the overall
10 summary of the basic requirements for a licensee when you
11 conduct a compliance inspection?

12 A Yes, it is.

13 Q And is it the same as what you do in conducting
14 an application inspection or a qualification inspection
15 for an applicant for a Federal Firearms License?

16 A Yes, it is.

17 Q Did you obtain a copy of the acknowledgement
18 that was associated with your conducting the
19 qualification inspection for this particular location of
20 Dick's Sporting Goods?

21 A Yes, I did.

22 Q Do you have a copy today?

23 A I do not have a copy today.

24 Q And why do you not have it today?

25 A Because that would be in the inspection file.

1 MS. LANCASTER: I'll offer into evidence
2 Government Number 13.

3 HEARING OFFICER: Government Exhibit 13 entered
4 into the record.

5 (Whereupon, Government's
6 Exhibit Number 13 was
7 marked for identification
8 and received into
9 evidence.)

10 BY MS. LANCASTER:

11 Q I'm showing you now Government 14; if you would
12 take a moment to look at that. Tell us what that is for
13 identification.

14 A Okay. This is a Firearms Transaction Record,
15 the ATF Form 4473. It's utilized whenever a transfer
16 occurs between licensed, a Federal Firearms Licensee and
17 a non-licensed individual. Section A is completed by the
18 non-licensee, by the transferee; and Sections B and D are
19 completed by the licensee.

20 At the every end, both individuals, the
21 non-licensee and the licensee, will sign and date the
22 form stating that they have, they understand what's on
23 the form basically, and that they've done everything to
24 assure that everything was true and correct on this form,
25 and they also understand that there are fines and

1 possible punishment that goes along with falsifying the
2 form.

3 Q And this a blank form that we have, a sample
4 form?

5 A Yes, it is.

6 Q Does that form, which does include the
7 instructions unlike those that we put into evidence
8 earlier, does those instructions have any reference to
9 information regarding the actual buyer or true buyer
10 portion of that document?

11 A Yes.

12 Q If you would turn to that and give us just a
13 very brief overview of what's contained there for
14 instructions?

15 A Okay. On page 4, column 1 under question
16 11(a), it refers to actual transferee/buyer. And with
17 this, it states for purposes of this form you are the
18 actual transferee/buyer if you're purchasing the firearm
19 for yourself or otherwise acquiring the firearm for
20 yourself. Examples, redeem the firearm from pawn,
21 retrieving from consignment firearm, rifle
22 (indiscernible). You're also the actual transferee/buyer
23 if you are legitimately purchasing the firearm as a gift
24 for a third party. Then it gives examples.

25 Mr. Smith asked Mr. Jones to purchase a firearm

1 for Mr. Smith. Mr. Smith gives Mr. Jones the money for
2 the firearm. Mr. Jones is not the actual buyer, not the
3 actual transferee/buyer of the firearm and may answer,
4 and must answer no to question 11(a).

5 The licensee may not transfer the firearm to
6 Mr. Jones; however, if Mr. Brown gave it to, goes to buy
7 a firearm with his own money to give to Mr. Black as a
8 present then Mr. Brown's the actual transferee/buyer of
9 the firearm and should answer yes to question 11(a).
10 However, you may not transfer a firearm to any person you
11 know or have reasonable cause to believe it's prohibited
12 under 18 U.S.C. 922(g) and/or (x).

13 Then it notes the exception, if you are picking
14 up a repaired firearm for another person, you are not
15 required to answer 11(a) and may proceed to question
16 11(b).

17 Q Does this information relate to what you have
18 referred to as a straw purchase earlier in your
19 descriptions?

20 A Yes, it does.

21 MS. LANCASTER: All right, that's all the
22 questions I have.

23 HEARING OFFICER: Okay.

24 MS. LANCASTER: And I'll enter Government 14.

25 (Whereupon, Government's

Exhibit Number 14 was
marked for identification
and received into
evidence.)

MR. BARNES: Thank you, Mr. Reilly.

RE CROSS EXAMINATION

BY MR. BARNES:

Q Mr. Williams, did you recommend in your field
report revocation of the license?

A On this one, in my recommendation, no, I
didn't.

Q Thank you, sir. Going back to question 11(a)
that you just read from the 4473 instructions, could you
-- let me ask it this way.

If a licensee picked up the telephone and
called you at the area office and said I have a
Mrs. Jones appearing before me right now who wishes to
buy the firearm for her own account, but Mr. Jones had
come in earlier in the day, but she has stated
unequivocally she's using her own money and she has a
hunt that she needs to attend to and she must have the
gun, how would you advise the licensee?

A How would I advise the licensee?

Q Yeah.

A Well, first of all, I would tell the licensee

1 as a Federal Firearm Licensee, you are to identify who
2 you're transferring the firearm to.

3 If you feel comfortable making that transfer
4 because you've identified that individual and you know
5 who you're transferring the firearm to and the individual
6 states that they are purchasing the firearm for
7 themselves, well then at that point, I would probably
8 tell them there's a section in, there's an area in
9 Section D of the form for notes by the licensee. I would
10 record all that information there and put the reason why.

11 And if I'm pretty certain that as far as I know
12 this individual and I know that they're going to be
13 person who's going to maintain control --

14 Q In other words if they're credible?

15 A Exactly. Then I would probably tell them that
16 in those instances --

17 Q They can proceed with --

18 A If you're certain then I would note all that
19 and I would put it there, and I would go ahead and make
20 that transfer.

21 Q So for you a best practice would be to create a
22 sort of contemporaneous record in, what is it block 31 or
23 30a, I can't remember?

24 A Or on the form itself.

25 Q Well, yeah, there's a notes column there, sure.

1 A But again, you're identifying your customer
2 and if you have no way to know that information then --

3 Q So 30c might be the appropriate place to put
4 that, the notes area?

5 A Exactly. But again, like I say, you're
6 identifying your customer because an identification, it
7 states that you're identifying your customer. And the
8 last statement before the licensee signs off states that
9 they verified the identity of the customer and that they
10 can tell that from all indications that they are not
11 prohibited.

12 If they can't do that, then I would advise them
13 -- if I can't verify that information and even though
14 they're coming in to my premises, on my licensed
15 premises, then I would definitely tell them that I
16 wouldn't make that transfer.

17 Q Right. The Gun Control Act doesn't require us
18 to make a sale of a firearm for any reason, does it?

19 A Exactly. No, it doesn't.

20 Q Now going back to the Federal Firearms
21 Regulations checklist that you referred to, sir, I assume
22 you've done this many, many times both with licensing
23 inspections and with the operational inspections, at the
24 end of the operational inspection?

25 A Yes.

1 Q Can you tell me what's the approximate size
2 of the white book in pages, just a rough guess?

3 A Pages?

4 Q Yeah.

5 A No, I couldn't.

6 Q Okay. It wouldn't surprise you if I told you
7 it was probably a little bit near 200 or over 200 pages?

8 A (indiscernible).

9 Q So when you're going over each of these areas
10 of the law, is it fair to say that you're making them
11 situationally aware of that area of the regulation and if
12 they have questions at that moment, they can ask you
13 further questions about it?

14 A They can ask me questions at any time during
15 the acknowledgement process or afterwards. I usually
16 prefer that questions are asked afterwards, but I've
17 never denied any licensee to ask questions during the
18 process because they always have questions. And because
19 they always have questions, it always goes on longer than
20 normally what it would actually take.

21 Q During the course of going over the form,
22 however, with them, do you point out to them that you're
23 going to have to go read the regulation or get further
24 information if you want to go into depth on the subject
25 because isn't it a true statement that you couldn't

1 possibly cover every area of the law here even in two
2 hours?

3 A Right, that is a true statement because again
4 it's an acknowledgement and we're going through each and
5 every section, but we're not reading every section of the
6 law because if we did that then no, there is no way that
7 we would complete that --

8 Q A week.

9 A -- in that two-hour timeframe.

10 Q Right. Now, sir, when you went over this with
11 the Licensee at the Wolfchase store, were there any
12 particular areas of compliance or operations that you
13 recall that, you know, struck you as peculiar for
14 instance that they didn't know that or they should have
15 known that?

16 A I don't remember. But I know every licensee
17 always has questions so whatever questions were asked at
18 that time, I'm sure they were addressed.

19 Q Right. The Gun Control Act of 1968 requires
20 that information be recorded into the Acquisition and
21 Disposition recordkeeping for the purchaser of a firearm
22 that's appearing personally before the licensee.

23 We have procedures for non-personal appearances
24 but they're extremely rare; I'm from Alaska, occasionally
25 they're used up there. So the applicant has to appear

1 personally before the licensee at their premises for
2 the disposition of the firearm.

3 What is your legal position then or what is
4 your position as an investigator on what should be
5 entered into the recordkeeping even though a firearm is
6 being physically transferred to the person who's filled
7 out a 4473?

8 In other words what I'm trying to ask is what
9 would you have expected Dick's to have entered into their
10 required federal recordkeeping despite the fact that
11 Mrs. Brady filled out the 4473 and that's when the
12 firearm was actually transferred to another person?

13 Because Congress is pretty clear, they say
14 that's the information that's to go into the record.

15 A This occurred as far as when you say -- had the
16 actual buyer appeared before the Licensee at the time of
17 transfer then that is the information that would have
18 been recorded in the Acquisition and Disposition log.

19 Q Mrs. Brady was not the actual buyer because?

20 A Because Mr. Jason Brady was the actual buyer.
21 I had reasonable cause to believe that Mr. Jason Brady
22 was the actual buyer.

23 Q Put another way. In terms of the required
24 recordkeeping for entering this information into Dick's
25 required recordkeeping, have you in any other instance

1 that you can recall today for any other inspection that
2 you've ever performed cited these exact provisions as a
3 violation for a licensee enabling or you believing they
4 had reasonable cause to believe they weren't enabling a
5 straw purchase?

6 Do you recall ever citing these provisions in
7 any other Report of Violations?

8 A I can't remember.

9 MR. BARNES: I have no further questions.

10 HEARING OFFICER: Ms. Lancaster?

11 MS. LANCASTER: No. I think break times good
12 and then we'll have one more witness to (indiscernible)
13 through.

14 HEARING OFFICER: The time is 11:03. We'll
15 take a short recess.

16 (OFF THE RECORD)

17 (ON THE RECORD)

18 HEARING OFFICER: Okay, the time is 11:18.

19 This is the resumption of the Dick's Number 375
20 revocation hearing. Ms. Lancaster.

21 MS. LANCASTER: Thank you. I'm calling my next
22 witness.

23 (Whereupon,

24 RICHARD HOWARD

25 was called as a witness, and after having been first duly

1 sworn, was examined and testified as follows:)

2 DIRECT EXAMINATION

3 BY MS. LANCASTER:

4 Q If you would please state your full name?

5 A Richard Anthony Howard; I go by Rick.

6 Q And if you would spell your last name for the
7 record.

8 A Sure, H-O-W-A-R-D.

9 Q How are you currently employed, Mr. Howard?

10 A Special agent with the Bureau of Alcohol,
11 Tobacco, Firearms and Explosives here in Memphis,
12 Tennessee.

13 Q How long have you been in that position?

14 A Six years, two months.

15 Q What just briefly are you duties and
16 responsibilities as a special agent?

17 A Investigate firearms, federal crimes, a little
18 bit of drug crime, arsons, explosives. Right now I'm
19 working with a gang here in Memphis trying to get
20 something going on with some local street gangs.

21 Q Now were you involved in any way in an
22 investigation by ATF related to Dick's Sporting Goods at
23 Germantown Parkway in Memphis?

24 A Yes.

25 Q Could you tell us what if anything you were

1 asked to do in that investigation?

2 A I was sent out for a NICS retrieval on a
3 firearm that was purchased in Ayre (ph.), here locally.

4 Q Could you tell us what you mean by the term
5 NICS retrieval?

6 A It's the only one I've done here. We don't
7 have a lot of them in Memphis. Someone had purchased a
8 firearm, and they believed that the person was prohibited
9 so we were supposed to get the firearm back from that
10 person.

11 Q In other words retrieve it, correct?

12 A Right, retrieve the firearm.

13 Q And that was to prevent a prohibited person
14 from being in further possession of that firearm?

15 A Yes.

16 Q Who gave you the assignment to retrieve that
17 firearm?

18 A My RAC at the time, Marcus Watson.

19 Q And do you recall what the description of the
20 firearm was just basically?

21 A It was a Mossberg 12 gauge. I don't remember
22 off the top of my head the model.

23 Q Did you actually obtain the firearm that you
24 were asked to retrieve?

25 A No. We spoke to the person who had possession

1 of it, Mr. Brady, and he had signed the weapon over in
2 May of 2013 to Memphis Police Department.

3 Q Did you follow up to find out any information
4 from Memphis Police Department as to whether they had in
5 fact obtained that firearm?

6 A Yes. While I was still with Mr. Brady, I was
7 able to get on their database and see that a report was
8 filed, they had taken possession of it. And I called the
9 property and evidence room here in Memphis, and they said
10 they still had possession of it at that time.

11 Q So when you say the property/evidence room,
12 that's Memphis Police Department property/evidence?

13 A Memphis maintains it, but Shelby County --
14 every municipality here in Shelby County uses it. It's
15 basically like an all-in-one evidence locker.

16 Q When you said Mr. Brady, do you recall his
17 first name?

18 A James, I believe.

19 Q And did you speak with him regarding his
20 firearm whether or not he had that firearm, or whether or
21 not anyone in his household had the firearm?

22 A Yes, I did.

23 Q Did anyone else accompany you on that visit to
24 retrieve the firearm?

25 A Jason Crenshaw, another special agent here in

1 the office.

2 Q And do you recall approximately when you went
3 to visit the Brady household?

4 A I think it was September 20th of '13.

5 Q Do you recall where that was?

6 A It was 70 Grove Dale in Memphis, Tennessee.
7 It's kind of out by Baptist Hospital near 240 and Walnut
8 Grove.

9 Q Did you ask Mr. Brady anything about the
10 Mossberg shotgun?

11 A Yes. We asked him about the purchase of it.
12 He said he went, he was going to go on a dove hunt with
13 some, I don't remember if it was a relative or some
14 friends, and he went to go buy a shotgun so he didn't
15 have to borrow one. He said he went to Dick's, applied,
16 did a little paperwork.

17 He had purchased guns previously, and he had,
18 can still carry a permit here in Tennessee so he just
19 went through the normal procedures.

20 He said he paid for it and then it came back
21 denied which he was, he said he was in shock. I believe
22 he's a fireman locally, either in Memphis or Shelby
23 County, so he had no indication that he would have any
24 issues with purchasing it.

25 So he said he went home and told his wife, and

1 his wife just said well, you need the gun, I'll go back
2 and get it for you later. So he didn't, his belief that
3 they didn't think they did anything wrong at that time.

4 Q What he told you regarding wanting a firearm
5 for that dove hunt, did he tell you about wanting it for
6 any other purpose?

7 A No, he just said for the dove hunt. He was --
8 he only owned one other firearm at the time, I think a
9 Taurus pistol.

10 Q Do you know whether or not Memphis Police
11 Department obtained all the firearms in that household
12 when they obtained that Mossberg?

13 A Yes, they took the Mossberg, a Taurus pistol
14 and some ammunition out of the house.

15 Q To your knowledge was it ever returned to the
16 Brady household?

17 A No, it was not. They were told not to go get
18 those firearms, and we had -- I spoke with the property
19 and evidence that if somebody came to get them, they'd
20 notify me, it's supposed to be in the file.

21 Q Did Mr. Brady mention anything to you about
22 attempting to purchase that firearm as a gift for anyone?

23 A No. No, he said he was going to use it for a
24 dove hunt.

25 Q Did he say whether or not anyone else

1 eventually purchased the same make and model of shotgun
2 as he had tried to purchase?

3 A Yeah. Like I said earlier, his wife,
4 Laura Brady, went and picked up the Mossberg 12 gauge
5 later on that afternoon, or later on that day.

6 Q And when you say later on that day, what day
7 are you referring to?

8 A I want to say it was November 6th of '12, I
9 believe, of 2012.

10 Q That was the same day that Mr. Brady had
11 attempted to purchase it?

12 A Yes.

13 Q Did you speak with the wife, Laura Brady,
14 Mr. Brady's wife?

15 A No, we did not.

16 Q And why did you not speak with her?

17 A She was at work at the time, and we were there
18 on the retrieval just to get the firearm since he was
19 prohibited. So at that point, I told my RAC the gun was
20 in custody. I talked to the AUSA at that time,
21 Jennifer Weber. They were both fine with it being in
22 custody and we were for our purposes done that day.

23 Q And just for the record when you say RAC, what
24 does that refer to?

25 A Oh, Resident Agent in Charge. I'm sorry, the

1 person in charge of my group here in Memphis.

2 Q Your supervisor?

3 A Yes.

4 Q And the AUSA refers to?

5 A Assistant United States Attorney.

6 MS. LANCASTER: All right, no other questions.

7 HEARING OFFICER: Mr. Barnes.

8 CROSS EXAMINATION

9 BY MR. BARNES:

10 Q Okay Special Agent Howard, has the
11 investigation been completed with regard to the Brady's?

12 A Yeah. We opened a general case on it as a
13 retrieval of firearm and since it was already out of his
14 custody, it was completed that day for us.

15 Q Did you and Special Agent Crenshaw ever attempt
16 to interview Mrs. Brady subsequently after that day?

17 A No.

18 Q Okay. And you testified that the Memphis
19 Police Department still has the weapon in their custody?

20 A Yes.

21 Q When you -- how long did you speak with
22 Mr. Brady when he was present?

23 A We probably talked to him for about
24 20-25 minutes.

25 Q Were you aware prior to your being dispatched

1 over for the next retrieval what his prohibited status
2 was, what the reason was for his prohibited status?

3 A I believe that, the information given to me
4 that day through our intelligence section had that he was
5 prohibited for, something through the VA hospital.

6 Q Mental health?

7 A Yeah.

8 Q Okay. So when you interviewed him, was he
9 responsive, was he cogent, was he lucid?

10 A Yeah, he seemed okay.

11 Q Okay. Did you make a report of the incident in
12 a record of interview?

13 A I did.

14 MR. BARNES: But the Government has not
15 introduced that record of interview, is that correct?

16 MS. LANCASTER: Correct.

17 BY MR. BARNES:

18 Q Did you or Special Agent Crenshaw interview the
19 Memphis PD officers who went over and retrieved the
20 weapons?

21 A No, sir.

22 Q Okay. And you said there were two firearms,
23 the Mossberg, the subject Mossberg shotgun, and perhaps a
24 Taurus pistol but you're not sure?

25 A I'm 90 percent sure it was a Taurus pistol, but

1 I would have to look at the, what actually MPD took.
2 He said they had taken a pistol from him and a shotgun.
3 And then in the report from Memphis PD showed a pistol, I
4 believe it was the Taurus, but I don't remember the exact
5 particulars of it.

6 Q At the time that you did interview Mr. Brady,
7 he did not mention to the best of your recollection that
8 his wife, Laura Brady, was the person going on the dove
9 hunt?

10 A No.

11 Q Now, sir, you went out in September of 2013, is
12 that your testimony?

13 A Yes, sir.

14 Q Okay. And the gun had been purchased in
15 November of 2012, is that correct?

16 A Yes, sir.

17 Q Was there a reason for the delay in going out
18 and getting the firearm?

19 A It would have nothing to do with me. I was
20 notified -- I reviewed this earlier. I was in FLETC
21 teaching at our academy. I got notification on the 22nd
22 of August that this NICS retrieval had come in. I wasn't
23 due back until the 27th and then we had a holiday so I
24 came back to work on the 3rd of September.

25 I had some cases that had stacked up so I got

1 those cleared out before I went. The due date for this
2 NICS retrieval was November 7th of '13 at the time. So I
3 just, I fitted it somewhere in my schedule then.

4 Q I see. When you checked with Memphis PD, were
5 they able to tell you what date the shotgun was entered
6 into the property room --

7 A It was on the --

8 Q -- or approximately?

9 A It's on the report. It was in May of 2013. I
10 don't remember the exact day, I'm sorry for that.

11 Q Okay. So you went out in September of 2013,
12 Memphis PD apparently did a retrieval in May of 2013?

13 A Right.

14 Q Okay. Did you or Special Agent Crenshaw, were
15 you ever asked to interview any of the Dick's employees
16 who may have been a party to the transaction?

17 A No.

18 MR. BARNES: That'll be it, Mr. Reilly. Thank
19 you.

20 HEARING OFFICER: Okay. Anything on redirect?

21 MS. LANCASTER: Just a couple of questions,
22 thank you.

23 REDIRECT EXAMINATION .

24 BY MS. LANCASTER:

25 Q Did you review the report that Memphis Police

1 Department made regarding their obtaining the firearms
2 from the household?

3 A I did.

4 Q And do you recall the reason that they obtained
5 all the firearms from the Brady household?

6 A They were called for a disturbance between
7 Mr. Brady and his wife. And while they were there, I
8 think it's the normal process, they check the parties to
9 make sure they don't have any warrants and it came up
10 that he was a prohibited person. So they asked him to
11 sign the weapons over and he did willfully.

12 Q Do you know if they obtained any ammunition as
13 well as the two firearms?

14 A I believe there's ammunition, but I don't
15 remember how much or what caliber.

16 MS. LANCASTER: All right, that's all.

17 MR. BARNES: Mr. Reilly, may I just ask one
18 recross?

19 HEARING OFFICER: Sure.

20 RECROSS EXAMINATION

21 MR. BARNES: On that report, was there any
22 indication of who exercised control over a particular
23 firearm? Do you recall anything like this is my pistol,
24 that's her shotgun, anything like that?

25 THE WITNESS: I don't recall that, I'm sorry.

1 MR. BARNES: Okay. We have to look at the
2 report to see what the report said, all right.

3 Thank you, Mr. Reilly.

4 HEARING OFFICER: Ms. Lancaster, is this
5 witness excused?

6 MS. LANCASTER: The witness is excused, and the
7 Government rests in case.

8 HEARING OFFICER: Thank you, SA Howard, you're
9 excused.

10 And the Government has concluded its
11 presentation. Mr. Barnes, are you ready to go?

12 MR. BARNES: I am, but for the convenience of
13 the Hearing Officer, if I can ask Ms. Lancaster, instead
14 of introducing redundant exhibits, I just want to make
15 sure that the Government's exhibits --

16 HEARING OFFICER: Yes, we did --

17 MR. BARNES: -- would stand for my exhibits.

18 MS. LANCASTER: Absolutely. What we do in that
19 situation to be clear, if you want to rely on a
20 Government exhibit, you just say Government Number 12,
21 and we mark it in the record as Licensee 1 and
22 Government 12 and that way it's clear you are also
23 relying on that same exhibit.

24 MR. BARNES: If you wouldn't mind, I'll give
25 you the list that you introduced and then you can cross

1 reference them. That'll just go a lot more
2 efficiently.

3 HEARING OFFICER: And just for the record, we
4 did -- what do we need to get in Exhibit, Government
5 Exhibit 14, I think is -- let's just say that Government
6 Exhibits 10 through 14 are entered into the record.

7 (Whereupon, Government's
8 Exhibit Numbers 10 through
9 14 were received into
10 evidence.)

11 HEARING OFFICER: Okay?

12 MS. LANCASTER: Okay.

13 MR. BARNES: Yeah, no problem.

14 HEARING OFFICER: And I can give you something
15 to mark yours if you need it.

16 MR. BARNES: Sure.

17 MS. LANCASTER: And it's fine to put those
18 labels onto the same Government ones as well just, you
19 know, right beside it or whatever so it's clear so that
20 we have a good, a clean record.

21 MR. BARNES: Ms. Lancaster, if I could just, if
22 we can stipulate to these exhibits which I will rely on.

23 MS. LANCASTER: Sure.

24 MR. BARNES: The Notice of Revocation, the
25 request for the hearing, the notice of the hearing, the

1 Report of Violations, both sets of ATF Forms 4473, the
2 TICS log and those would be duplicative exhibits.

3 MS. LANCASTER: Okay.

4 MR. BARNES: So Notice of Revocation, request
5 for the hearing, notice of the hearing, Report of
6 Violations --

7 MS. LANCASTER: Both of those notices 'cause --

8 MR. BARNES: Both of the notices.

9 MS. LANCASTER: -- the rescheduling is two
10 separate things so better to specify both.

11 MR. BARNES: Yeah, all notices. Right.

12 HEARING OFFICER: Okay, the ROV?

13 MR. BARNES: Yeah, the ROV and the 4473s and
14 the TICS log and that'll --

15 HEARING OFFICER: The TICS log?

16 MR. BARNES: Yeah, Tennessee Instant Check
17 System log.

18 MS. LANCASTER: And the TICS log, you're
19 talking about this one, 12?

20 MR. BARNES: Yes, I am, that's right, that's
21 correct. Okay. Is that acceptable to the Government?

22 MS. LANCASTER: Absolutely.

23 MR. BARNES: Okay. With that then Mr. Reilly,
24 I'm ready to proceed with our first defense witness.

25 HEARING OFFICER: Sure.

1 MR. BARNES: So I'm calling Kevin Dodson.

2 (Whereupon,

3 KEVIN DODSON

4 was called as a witness, and after having been first duly
5 sworn, was examined and testified as follows:)

6 DIRECT EXAMINATION

7 BY MR. BARNES:

8 Q And if we're ready to proceed, Mr. Dodson, I'll
9 ask you to state your name for the record, please?

10 A It's Kevin Dodson, D-O-D-S-O-N.

11 Q And your position with Dick's Sporting Goods?

12 A I am the manager of Loss Prevention/Compliance
13 & Logistics.

14 Q And can you explain to the Hearing Officer what
15 that means exactly in terms of your national
16 responsibilities?

17 A Sure. I have responsibility for all the
18 policies and procedures related to the sale of firearms
19 at Dick's Sporting Goods across the country as well as in
20 our distribution centers, how we sell firearms, how we,
21 you know, acquire firearms at our distribution center the
22 whole way through the chain to the (indiscernible).

23 Q And do you spend time in the field ensuring
24 that those policies are met and are carried out?

25 A Yes, I spend time. I have a supervisor that

1 works for me that also spends time, and we have a field
2 group of district loss prevention managers that conduct
3 routine audits throughout the year to validate that we're
4 in compliance.

5 Q As a part of that responsibility, is it your
6 job to review the Federal Firearms laws and the
7 regulations, and to come up with practices and procedures
8 that would fully comply with those laws and regulations?

9 A Yes, in addition to state laws and regulations
10 as well.

11 Q With regard to those practices and procedures,
12 would one of them be how to spot, reduce and hopefully
13 eliminate attempted straw purchases at Dick's stores?

14 A Yes, absolutely.

15 Q Okay. So can you describe to me what those
16 methods are? And it may be helpful if we ask you to
17 refer to our Exhibit Number 1, the Dick's gun manual, and
18 I'll mark that for you to refer to.

19 (Whereupon, Licensee's
20 Exhibit Number 1 was marked
21 for identification.)

22 THE WITNESS: Probably the first thing,
23 anything that we do for a straw purchase recognitions are
24 our training, our internal training. We have a couple of
25 different training resources that we utilize.

1 We have a Learning Management System which is
2 a computer application training program. And we have a
3 gun sellers certification course that everybody that
4 sells firearms complete and pass a test with
5 100 percent. And part of that is a straw purchase
6 scenario based, there are videos, it's a scenario based
7 training that -- it's really, it was created in house by
8 us to focus on transactions that we see on a pretty
9 routine basis at Dick's Sporting Goods.

10 And in addition to that, everybody has to watch
11 the Don't Lie For the Other Guy video related to, you
12 know, straw purchases, a video that they get and the NSSF
13 provided to us in all our stores.

14 Q And can you tell me what's your experience with
15 the Wolfchase store in terms of their core competencies
16 that they have to acquire in complying with not only the
17 laws of the United States but Dick's procedures?

18 A They were fine. They were as good as anybody,
19 any other store in the company.

20 Q Okay. You said that you've encountered straw
21 purchases, can you just walk the Hearing Officer through
22 what the standard operating procedure is for spotting,
23 identifying, interdicting and reporting?

24 A Okay. So we utilize a denied/delayed log we
25 call it and any time a person comes in and they're either

1 put on a delayed -- and we don't release firearms under
2 the three business days so people can stay on the delayed
3 log for a pretty extended period.

4 Any time somebody's delayed or denied, we list
5 them on a log book, and we maintain that log book. And
6 depending on the store, at the location where they
7 conduct the background checks.

8 So if it's a store that utilizes an online
9 background check system, it would be maintained with the
10 computer. For the background checks that are done in
11 (indiscernible) utilizes a file that's maintained at
12 (indiscernible).

13 And our policy is any time that somebody gets
14 denied, delayed or listed in the log, any time we sell a
15 gun, we check that log and look for same address; similar
16 address; same last name; in some cases, same gun.

17 And then we also utilize a BOLO program that we
18 call it because we have a lot of stores in the vicinity.
19 So if somebody gets denied at one store depending on
20 distance to the closest store, there's a phone tree that
21 they have to utilize to call stores that are pretty close
22 because what we see is they'll get denied at this store
23 and they'll just drive 20 minutes to the other store and
24 try to have somebody go in and purchase the firearm.

25 So we send out a BOLO with a physical

1 description and denied information.

2 MR. BARNES: Well if I may, I'd like to
3 introduce Licensee's Exhibit Number 2 which is a whole
4 system of documents. And if you can walk the Hearing
5 Officer through what you just described and describe this
6 system of documents as Licensee Exhibit Number 2.

7 And I'm handing the Government now a copy of
8 the same thing.

9 (Whereupon, Licensee's
10 Exhibit Number 2 was marked
11 for identification.)

12 THE WITNESS: So this is the operational
13 procedure that they keep in the front of the binder just
14 so that they are aware of --

15 BY MR. BARNES:

16 Q When you refer to they, you mean each store?

17 A Each store, sorry. Each store keeps it in
18 their denied/delayed folder. And this document walks
19 them through how to use the log, where to list or what to
20 list in the log as well as the quarterly maintenance.

21 Because some of the delays turn into a proceed
22 so to keep the information small so it's easier to
23 reference, we purge that every quarter by just re-adding
24 the denied purchases and the current active delayed
25 purchases into the log and purge out all the proceed

1 transactions.

2 And then with the straw purchase alert that I
3 referred to as the BOLO, we send it to all stores in the
4 district.

5 Q Do you have a sample of the BOLO form in that
6 system of interdicting straw purchases?

7 A Here's a sample of the denied/delayed log. And
8 it contains the last name, first name, street address,
9 city and state, zip, the date, the NTN number if there's
10 one provided. And the reason I say that is we deny a lot
11 of transactions based on other factors, comments.

12 If somebody answers a prohibitive question or,
13 you know, run a background check, we're not required to
14 keep that form because there was no NICS check or TICS
15 check initiated. But we keep these forms and list those
16 because we still have a prohibited person; it's just we
17 didn't get informed by the government they were
18 prohibited, we were informed by the customer themselves
19 that they were prohibited by the way they answered 11.

20 Q And can you put people on that log who make
21 remarks that are very disturbing or suspicious?

22 A Absolutely, and we do. And we actually had a
23 space here a few years ago for description information
24 because we've had people come in that we had never
25 obtained an actual name. So three guys came in, this is

1 what they were dressed like.

2 You know, a real prominent example was the,
3 there was a case in Virginia that --

4 Q Right.

5 A We actually denied those people and they were
6 buying guns in another store.

7 Q And to be clear about this log, is this log
8 that's maintained by Wolfchase just solely for
9 transactions that are occurring physically in that store,
10 or is it a combined universal log of a group of stores in
11 the Tennessee area?

12 A It's combined, it's actually the closest two
13 districts so it would be Tennessee and depending on the
14 location, it could bleed into other states.

15 Q And how would a person empowered to conduct
16 firearms operations at Wolfchase know to put other store
17 information on that log? Do they receive an alert, and
18 what is that alert called?

19 A It's the BOLO, and what it does is every
20 manager on duty carries a, it's like an iPhone, they call
21 them the manager-on-duty phone. And so when they get an
22 e-mail, it alerts them. They look at it and it says, you
23 know, BOLO straw purchase alert, you know, look out. And
24 then they know to go back and print this out.

25 Then they maintain this printout in the third

1 tab in their denied/delayed log but then if you see on
2 the denied/delay log they record it, but then they record
3 the store where they received the BOLO or alert from.

4 So, you know, in this case, it was from a
5 different store so they just recorded that and they
6 record the date denied. So it really limits our --

7 Q How many stores would Wolfchase be getting data
8 from to create that BOLO log, that deny/delay log?

9 A Off the top of my head, I would say 14.

10 Q So when a firearms purchase is attempted, going
11 back to your procedures again, the standard procedure is,
12 is that the purchaser or the clerk must do what?

13 A Review the deny/delay log.

14 Q Prior to doing what?

15 A Running the background check.

16 Q All right. Are there any other aspects of this
17 system of what we call extra-regulatory recordkeeping
18 that you'd like to point out to the Hearing Officer?

19 A No, nothing that I can think of at this time.

20 Q But in summary, your BOLO system is intended
21 not only to interdict small, or straw purchasers at the
22 Wolfchase but to prevent rejectees from other Dick's from
23 coming to Wolfchase and trying to do the same thing; is
24 that correct?

25 A That's correct. We've also actually cooperated

1 with other competitors if you will. If it's like, you
2 know, if somebody's making some very disturbing comments,
3 they'll often notify the district loss prevention manager
4 who will notify me. And we'll partner with the
5 compliance person from, you know, like, again
6 (indiscernible) Bass Pro Shop in a joint effort to stop a
7 straw purchase.

8 Q And what's your track record, or what's Dick's
9 policy on informing the government about attempted straw
10 purchases?

11 A If we have a -- we have a smart alert system
12 it's called. It's a case management system, it's called
13 LPMS.

14 So what they'll do is they'll enter in a -- the
15 problem we see and sometimes it's not really a straw
16 purchase attempt, it's just they'll enter in just a
17 denied transaction. So we don't inform the government of
18 a denied transaction.

19 But if it was an actual straw purchase attempt
20 or if one that transpired, we'll call the local IOI and
21 let him know. And typically they just ask me to send
22 them the copies of the 4473s involved.

23 Q Going back to the training that you provide
24 employees in maintaining the core competencies for Dick's
25 operations personnel, if somebody -- how do you test

1 those core competencies?

2 A There's a test at the end of the completion
3 that they have to pass with 100 percent or they can't
4 sell firearms.

5 Q To the best of your knowledge, did
6 Mr. Krueger who was the clerk in question in this
7 question in this transaction, did he pass that test?

8 A Yes.

9 Q Do you or any of your staff at the national
10 level, at the corporate level, do you conduct audits of
11 each of your Dick's stores for firearms compliance
12 operations?

13 A We conduct random audits from the corporate
14 perspective, but our district loss prevention managers
15 conduct audits of every store.

16 We've also utilized the program the NSSF has
17 where we can have somebody come in and give us an
18 evaluation of our stores.

19 Q You were a recipient of the Notice of
20 Revocation for the Wolfchase store, were you not?

21 A Yes.

22 Q And can you tell me your reaction to it when
23 you received it?

24 A I was shocked.

25 Q Can you explain the basis for your shock?

1 A A couple things. First, our inspection
2 results typically are good. What I mean by that is our
3 goal is actually to have no violations which it's hard to
4 achieve that goal, but 76 percent of our inspections last
5 year had no violations.

6 And, you know, I'm actually, I track that and
7 compare it to the national average of, I believe it was
8 like 49.5 percent last year.

9 In addition, when I first got the notice of the
10 Report of Violations and I looked at what we were cited
11 for and compared that to a previous inspection where we
12 had the same violation, I told this store that this is
13 probably going to be a warning conference and we need to
14 be ready.

15 I try to make warning conferences as
16 comfortable for our store as possible. So I fly in, I
17 require a lot of, probably a lot of people to attend that
18 need to be. So our regional vice president, our loss
19 prevention director, we all go in as a group so that they
20 see, you know, it's not just me going in there to listen
21 to things that I probably already know.

22 So yeah, I was shocked to see the revocation
23 based on that because of our Bloomington, Illinois, or
24 Bloomington, Indiana, store being cited for that same
25 exact scenario and we had a warning conference.

1 Q Now the Bloomington, Indiana, scenario
2 you're referring to, is this the case that you're
3 referring to, and I'm handing Mr. Dodson Licensee Exhibit
4 Number 3.

5 A Uh-huh.

6 Q We'll just maintain the, we'll turn the
7 exhibits in, in just a moment to the Hearing Officer, if
8 you'll keep them in order then.

9 (Whereupon, Government's
10 Exhibit Number 3 was
11 marked for identification.)

12 BY MR. BARNES:

13 Q And so that was, in part, the basis for your
14 shock that you saw one attempted violation, and you
15 didn't really understand the basis for this. Did you
16 immediately commence an investigation?

17 A At the point of the revocation, or at the point
18 of the violations being issued?

19 Q At the point of the -- after the revocation
20 notice was received, did you initiate an investigation to
21 find out what happened at the store?

22 A Yes. So I actually contacted our legal
23 department, Mary.

24 Q Can you briefly explain what the results of
25 your investigation were and what you think happened?

1 A Well the associate was no longer employed
2 there but when I sent our district loss prevention
3 investigator in to see what happened, how did we miss
4 this, you know, how did we miss a straw purchase, what we
5 noticed was that the, Mr. Brady was denied but they
6 failed to record his information or denied/delayed log.

7 Q They being the clerk?

8 A The associate.

9 Q Would that be Mr. Krueger?

10 A Mr. Krueger, yes. He forget to record the
11 information in the denied/delayed log which, you know, in
12 normal circumstances would lead to corrective action of,
13 to a possible termination of employment. But he was no
14 longer with us so we couldn't take that action against
15 Mr. Krueger.

16 Q Did you also try to investigate the facts and
17 circumstances surrounding that day, November 6th?

18 A Yes, we did. We looked at our gun sales to
19 see, because it was the same clerk and the same day, how
20 many firearms were actually transferred that day.

21 You know, our primary business in our lodge
22 area runs through the third and the fourth quarter which
23 essentially means from, from really September through
24 December is our peak season in the lodge business 'cause
25 that's when hunting season occurs. So ammunition sales,

1 firearm sales, knives, all the other accessories that
2 go with the outdoor area, that's our peak season.

3 I think, in fact, our company sells about 75 to
4 80 percent of our firearms during the third and fourth
5 quarters throughout a year.

6 Q During that time period going back to November
7 of 2012, would you say that the firearm's inventory at
8 that time is about what it is now, or are we about the
9 same amount on display?

10 A The display racks probably, we try to keep
11 those full, but we do ramp up our inventory for the third
12 and fourth quarters so they would have had probably more
13 guns in back stock at the time.

14 Q And approximately how many guns is that?

15 A I would say total, that store probably
16 350-400 firearms at any given time.

17 Q Okay. Going further with the investigation
18 that you conducted, did you come to any conclusion about
19 the employee's conduct that day with regard to the
20 recordation of information in the denial log?

21 A Well one -- really the only other thing that we
22 kind of concluded was why the serial number was the same.
23 And it's really based on the way our stores are set up.

24 So that particular shotgun, I believe it was a
25 Maverick Mossberg 12 gauge, a lot of times what we'll do

1 is we'll show the one on display but rather than go
2 back -- we keep our display boxes on the top shelves in
3 our stockroom so unless specifically asked for the
4 customer, we won't take that display gun and get the
5 display box. We show it, but then we go and get them --
6 we keep our stockroom organized by manufacturer, model
7 and things like that and they're on shelves. So they
8 would just go get the top one of that gun and give it to
9 the customer.

10 So what we think happened was they grabbed the
11 top one, the guy was denied, they put it back in. When
12 Mrs. Brady came in, they went back and grabbed the same
13 gun and transferred it over. You know, a reasonably
14 priced item like that, we typically keep a few on hand
15 for the busy season.

16 Q With regard, again, to your looking at the
17 facts and circumstances surrounding Mr. Krueger's action,
18 did you conclude that there was a specific reason why he
19 did what he failed or the action he failed to take?

20 A We just -- it was because he didn't follow
21 process. He just made a mistake and didn't write the
22 information in the denied/delayed log.

23 Q So from your standpoint, you would look at it
24 as mere inadvertent or mere human error?

25 A Yeah, it was human error. That's what our,

1 that's what we walked away with.

2 MR. BARNES: I have no further questions.

3 MR. MARTIN: Do you want to introduce your
4 exhibits?

5 MR. BARNES: Yeah, I'd like to ask that they
6 be, Licensee Exhibits 1, 2 and 3 be entered into the
7 record, and one and three, did somebody have -- let's see
8 if it's under here.

9 THE WITNESS: I kind of shuffled through them,
10 sorry.

11 MR. MARTIN: Through three will be that
12 Bloomington, Indiana. Two looks like this, Mark.

13 MR. BARNES: Yeah. And let's see if we can --
14 here we go.

15 THE WITNESS: Oh, I missed it. I'm sorry.

16 MR. BARNES: Yeah. The manual is only -- for
17 Exhibit Number 1, I should have only had --

18 THE WITNESS: This is the chapter the gun
19 manual.

20 MR. MARTIN: Exhibit 1, I show pages 10, 11 and
21 12 as an excerpt from the manual.

22 MR. BARNES: Yeah. There's Exhibit 1, and
23 Exhibit 2 we had as a system of documents; let's just
24 make sure we got those. I should probably staple these
25 but I didn't. So you have --

1 MR. MARTIN: I have an operation of
2 excellence (ph.)

3 MR. BARNES: No (indiscernible).

4 MR. MARTIN: I have firearms process.

5 MR. BARNES: Right.

6 MR. MARTIN: I have a denial log.

7 MR. BARNES: One second. Yeah.

8 MR. MARTIN: I have a straw purchase phone
9 list. I have a BOLO.

10 MR. BARNES: Yeah.

11 MR. MARTIN: I have another BOLO. I have four
12 BOLOs.

13 MR. BARNES: Yeah. Those were probably just
14 extra copies. We only intended one.

15 MR. MARTIN: Did you introduce all four, or do
16 you just want to introduce --

17 MR. BARNES: No, just one.

18 MR. MARTIN: All right, let me --

19 HEARING OFFICER: They're all blank, right?

20 MR. BARNES: Yes, sir.

21 MR. MARTIN: Yeah, all blank.

22 HEARING OFFICER: All right, Licensee
23 Exhibits 1, 2 and 3 entered into the record.

24 (Whereupon, Licensee's

25 Exhibit Numbers 1 through 3

were received into

evidence.)

3 MR. BARNES: And excuse me, I was in error. I
4 had one more direct examination question I wanted to
5 introduce; this will be Number 4.

6 BY MR. BARNES:

7 Q Mr. Dodson, I hand you a document that if
8 you'll just describe for the Hearing Officer the top
9 document and then the underlying document that it was
10 responding to?

11 A Okay. This is the revocation notice.

12 Q No, that's that the response to our request to
13 rescind the request --

14 A Oh, response to rescind the revocation.

15 Q Right. And the underlying document was the
16 request.

17 A And then this was our request to rescind based
18 on our investigation.

19 Q Right. Did you help compile that information
20 and review the document?

21 A Yes, I did.

22 Q And in your opinion as the individual
23 responsible for the programs and policies of Dick's for
24 compliance, is this a fair and accurate rendering of
25 Dick's complete investigation and position on the matter?

1 A Yes, it is.

2 MR. BARNES: All right, thank you. I'd like to
3 enter this into the record as Licensee Exhibit Number 4.
4 And we need to give you all a copy, and I think I've got
5 one here.

6 MS. LANCASTER: Is that the same as what you
7 submitted earlier?

8 MR. BARNES: Yes.

9 MS. LANCASTER: That's fine. We'll just mark
10 our earlier copy.

11 MR. BARNES: Okay, very good.

12 HEARING OFFICER: Licensee Exhibit 4 entered
13 into the record.

14 (Whereupon, Licensee's
15 Exhibit Number 4 was marked
16 for identification and
17 received into evidence.)

18 MR. BARNES: Thank you, Mr. Reilly. Just to
19 make sure -- yeah. That completes our direct examination
20 of Mr. Dodson.

21 HEARING OFFICER: Does the Government have any
22 questions for Mr. Dodson?

23 MR. MARTIN: Yes, sir.

24 HEARING OFFICER: Okay.

25 CROSS EXAMINATION

1 BY MR. MARTIN:

2 Q Mr. Dodson, you testified that you go through,
3 that Dick's Sporting Goods go through a lot of training
4 for their sales associates all the way up when they're
5 dealing with firearms, right?

6 A Correct, sales associates who work in the lodge
7 and our managers.

8 Q Okay. And by lodge, you're talking about the
9 area where firearms are sold within a Dick's Sporting
10 Goods retail location?

11 A Correct, it's behind the hunting area.

12 Q Now you testified that you all have a number of
13 other processes outside of those required by the Gun
14 Control Act and the regulations, right?

15 A Yes.

16 Q You do other logs, do you have this BOLO sheet,
17 other sheets things you all do, right?

18 A Correct.

19 Q And in fact, one of the exhibits, the
20 Licensee's Exhibit 1, is the excerpt, and it's 27.5,
21 Denied Transactions, out of Chapter 27; it's an excerpt
22 of the policies of Dick's Sporting Goods, right?

23 A Yes.

24 Q And example number 2 at 27.5.1 talks about
25 straw purchases in that policy. In example 2 of that

1 very document it says the purchaser is declined --
2 these are ways that you can identify a straw purchaser
3 and example 2 is the purchaser is declined based on
4 results of the NICS background check. Following the
5 decline, another person completes the F-4473, I believe
6 that's the Form 4473 for ATF, right?

7 A Correct.

8 Q Then going on, then purchases the firearm for
9 the declined or prohibited individual. That's an example
10 that you test on and in, that's in your own policy.

11 And then looking down that page, it talks about
12 spouses and, again, this is giving examples of things
13 that, you know, they should pay attention to. If a
14 customer selects a firearm and indicates in any way they
15 are the individual who will purchase the firearm but
16 their spouse completes the F-4473 for the transfer is
17 considered a straw purchase. And that excludes gift
18 purchases, right?

19 A Correct.

20 Q Okay. And then it gives examples of questions
21 to ask and those are identified as, is the firearm for
22 you or someone else. If it is for someone else, you will
23 ask is it a gift. If the customer answers no, politely
24 decline the sale and request the gun owner return to
25 complete all required forms.

1 So that's almost in your own policy sort of
2 what happened here, isn't it? Mr. Brady came in, he was
3 denied under the TICS and he left without the gun, right?

4 A Correct.

5 Q And then his wife, same last name, same
6 address, same day and within three firearms sales or four
7 firearms sales, made this purchase of the same make,
8 model of firearm, right?

9 A Correct.

10 Q So your own policy didn't work in this
11 instance, did it?

12 A The examples that were in there?

13 Q The examples that we talked about, the things
14 that should --

15 A Well if he would have asked is the firearm for
16 you and she said yes --

17 Q We don't know that though, do we?

18 A But we don't know that. But that's why we have
19 the denied/delayed log in place to validate it because
20 typically straw purchaser's lie.

21 Q You all go through this training and all these
22 other steps because you understand that your employee's
23 conduct is imputed back to the FFL, right?

24 A Correct.

25 Q And you know that there is this prohibition out

1 there for straw purchases that you have to sell it to
2 the actual purchaser unless it's a gift, right?

3 A Correct.

4 Q So knowing that, your employee who does this
5 activity, your policies are inadequate, ends up selling
6 the firearm to someone that it is a straw purchase,
7 right?

8 So knowing that, it still happens, the sale
9 still happens. You knew it, and you didn't abide by the
10 law on that transaction, those two transactions. One
11 transaction you did, you denied it; the second
12 transaction, you didn't, right?

13 A I would say correct. There was a mistake made.

14 Q So you heard the testimony of the Industry
15 Operations Investigator, Mr. Williams, who talked about
16 this is the way that the requirement -- Mr. Barnes was
17 asking him did you know that Dick's Sporting Goods does
18 other things beyond what's required, do you remember
19 that?

20 A Yes.

21 Q And he said, Mr. Williams said if you put the
22 denials in chronological or alphabetical order, that's
23 what's required, you remember that?

24 A Yes.

25 Q So if Mr. Krueger, the sales clerk in this

1 instance, had done that, if he would put them in
2 chronological order, there would have been no other
3 denial between his and when his wife made the purchase,
4 right? His was the only denial that day from the TICS
5 log?

6 A Correct. It would have been in the yearly
7 denied folder which is separate from the proceeds but in
8 a file cabinet in the back room.

9 Q Well he got a denial, Mr. Krueger got the
10 denial back from TICS, right?

11 A Right, and we would file it. We file
12 chronological.

13 Q And then if you put in alphabetical order when
14 Ms. Brady came in, he could have checked the file and
15 seen hey, here's Ms. Brady's, Mr. Brady's name, same
16 address, same firearm, everything is the same; I should
17 probably ask these questions or check on this or maybe
18 even deny the purchase outright.

19 A We ask those questions regardless.

20 Q We don't know if Mr. Krueger asked those
21 questions 'cause he's not here?

22 A No, we don't. But that's what our training is
23 intended for, is to ask the questions regardless of --
24 it's not just, it's customer service, what are you going
25 to use the gun for. And if the guy says I'm using it for

1 squirrel and he's buying a 300 Win Mag, we're going to
2 deny the transaction just because it's pretty apparent
3 what it is.

4 But we file chronologically in a file the way
5 we're supposed to, and I think he testified that our
6 forms were in proper order.

7 Q He did.

8 A But to go back in to where the files are kept,
9 that's why we use the log book because it's done at the
10 point of sale and at the point of transaction, and we
11 found that to be -- that's the policy we have in place
12 'cause I don't believe we're required to go look in the
13 denied files for every sale.

14 Q No testimony is to that at all.

15 A Okay.

16 Q But what we're talking about here is the steps
17 to go to prevent this from happening, that Dick's goes
18 through everything that you do outside of that. But the
19 very thing that -- filing them chronologically, much
20 easier to go back and see Bs, Brady, there's no other B
21 or there is just one B and that's Mr. Brady and here's
22 Mrs. Brady asking for the same gun, right?

23 So you didn't take any steps, I mean, the easy
24 steps of it's right here. You create a log that in this
25 instance just didn't work, right?

1 A Correct, there was a mistake made.

2 Q Now you talked about this is a high-volume time
3 for Dick's Sporting Goods?

4 A Correct.

5 Q And I'm not sure if you had a chance to look at
6 the TICS log in this case. Have you had a chance to look
7 at it, it's Government's 12?

8 A No, but I've looked at the gun sales for that
9 day.

10 Q Okay. Are you aware that there were five sales
11 from -- there was a sale, Mr. Brady's attempt, the three
12 other sales and then Mrs. Brady?

13 A Yes, I am.

14 Q And Mr. Krueger made both of, or he countered
15 both of those customers at the counter?

16 A Correct, I'm aware of that.

17 Q And it was within an eight/nine hour period?

18 A Correct.

19 Q Do you know how many sales he made otherwise?

20 A Other types of transactions?

21 Q Other firearm sales --

22 A No, I don't know that off the top of my head.

23 Q -- that day.

24 A He's responsible for the whole lodge so it runs
25 from camping up through fishing, kayaks into the gun

1 department over in ammunition. It's basically a
2 corner of the store.

3 So when I was referring to busyness, it wasn't
4 just the firearms portion of the business. It was the
5 ammunition which as everybody knows is a huge, I mean,
6 busy item right now especially when you had it back then
7 and as well as all the other hunting accessories, knives,
8 scopes. He would also do scope mounting or any other
9 items that may come into play during that period.

10 Q He's in encountering a number of other
11 customers that are buying a number of other things?

12 A Right, that's what I'm referring to.

13 Q But behind the gun counter that day, he had one
14 denial for one gun, and then, what, eight or nine hours
15 later he has same last name, same address, same firearm
16 sale?

17 A Correct.

18 Q And one of the exhibits that was identified
19 that you participated in was the Licensee's Number 4
20 which is a letter from Mr. Barnes that was asking, you
21 know, we think that you should reconsider this and the
22 whole revocation process?

23 A Correct.

24 Q And you participated in creating that document,
25 reviewing it --

1 A Providing information if requested.

2 Q Providing information, okay. And so did you
3 participate in any portion of like we, that Dick's did
4 not act willfully? Did you talk about Dick's actions on
5 that part?

6 A No.

7 Q Okay. You didn't review any of the legal
8 stuff, or did you do that?

9 A I read through the document, yes.

10 Q All right. You said that you were surprised
11 when you found out that you had, that Dick's Sporting
12 Goods had sold this firearm, that a straw purchase had
13 occurred. You were surprised that you --

14 A I said I was surprised when we got the
15 revocation.

16 Q When you got revocation of this?

17 A Yes.

18 Q And that's based on that Bloomington, Indiana,
19 same experience, same --

20 A Same scenario.

21 Q Same scenario.

22 A Same exact scenario actually.

23 Q You understand that this is the Nashville Field
24 Division, and each instance stands on its own, right?

25 A I do understand that, yes.

1 Q Okay. Were you surprised to learn from the
2 agent, the testimony, that the Memphis Police Department
3 had to go out and get this firearm during a domestic
4 violence situation?

5 A Yes. Well, he didn't say, he said disturbance.

6 Q Domestic --

7 A But I was surprised that that's what -- I knew
8 the Memphis PD obtained the firearms already, but I was
9 surprised to hear it was because of a disturbance.

10 Q A domestic disturbance, okay.

11 A He just said disturbance.

12 MR. MARTIN: That's all I have, thank you.

13 THE WITNESS: Uh-huh.

14 MR. BARNES: I just have a couple redirects.

15 HEARING OFFICER: Sure.

16 REDIRECT EXAMINATION

17 BY MR. BARNES:

18 Q Mr. Dodson, Mr. Martin said that somehow Dick's
19 knew about the straw sale but from your investigation, is
20 that the conclusion that you came to?

21 A No, we didn't know until (indiscernible).

22 Q Again, your conclusion was that it was just
23 mere human error in terms of failure to record into the
24 log, the denial log?

25 A Correct.

1 Q How far back can a denial log go so that if
2 I'm a clerk at the front counter and I'm going back or
3 I'm looking at the denial log, how much horizon does it
4 give me to go back and look at names?

5 A A year.

6 Q So that's a fairly lengthy period of time?

7 A Yeah.

8 Q Right. In your experience, most straw purchase
9 attempts or somebody is denied and comes back, you know,
10 for lack of better words, a time to crime --

11 MR. MARTIN: I like your choice.

12 BY MR. BARNES:

13 Q -- in your experience, does that go on for
14 weeks or months, or is it fairly prompt that they try to
15 make another attempt?

16 A It's usually within a week, I mean, usually
17 it's the same day. In the majority that we see, they go
18 to another store and try it. But it's usually the same
19 day or within a few business days after the fact.

20 Q Okay. And so this mechanism that you've set up
21 to have eyes on all transactions, not only in this Dick's
22 district but in all Dick's districts, there's the same
23 process obviously in place?

24 A Yeah.

25 Q It gives the ability for the people conducting

1 firearms operations to see readily and apparently
2 district wide who may be problematic for an attempted
3 straw purchase?

4 A Correct.

5 Q Okay. And up to a year then, is that correct?

6 A Yes.

7 Q Okay. Now, are there any plans to better
8 automate this system so that detection of straw purchases
9 can be perhaps a little bit more automatic?

10 A Yes. We actually rolled out a, we call it FMS,
11 Firearms Management System. It rolled out to a few test
12 stores last fall and then we got it into a 100 stores
13 where we didn't need to add any kind of hardware. But
14 it's an electronic 4473 that -- and then we'll also using
15 E-Check and we're integrated with NICS in the NICS
16 states.

17 But when we get to denied transactions, any
18 time there's a denied, there's two ways to handle it. If
19 it's denied by the POC state or by NICS then we actually
20 keep the denied/delayed log electronically.

21 And then we also have the ability to enter a
22 new denied customer so if we wouldn't have, if they
23 wouldn't go through a NICS check then they would just
24 answer a prohibitive question incorrectly, we can go in
25 and enter their information.

1 So what the program does now is so if, you
2 know, somebody comes in and tries to buy a firearm with
3 the same last name as somebody that's denied, it'll flag
4 within a surrounding state or bordering state. So it
5 doesn't automatically deny, but it flags and it brings up
6 that denied individual's information so you can see why
7 they were denied.

8 So it'll say, you know, the system
9 automatically denies you if you answer 11(k) no. So say
10 a customer answered, you know, 11(k) no, that's why it's
11 flagging in this automated system.

12 So it's essentially the same process, but now
13 it's automated and it's company wide and it's checked in
14 three states or surrounding states around the store.

15 Q And now once that flag comes up then in
16 accordance with Dick's standard operating procedures, is
17 there an obligation on the part of the store staff to vet
18 that transaction?

19 A Yeah, absolutely. They have to actually -- it
20 tells them it's flagged because they're a denied person,
21 they click a button, it shows them the reasons it's
22 denied. And what it allows them to do is compare the
23 address.

24 You know, if it's Smith, I mean, it's not going
25 to -- if it's Ray Smith that lives in Cleveland, Ohio,

1 and he's, you know, the guy denied was John Smith that
2 lives in Pittsburgh, Pennsylvania, you can make the
3 determination that there's no relation.

4 What I always tell everybody is always anything
5 you don't like, you know, that's what we always do. And
6 it surprises the, oh, yeah, that's my brother. We're not
7 going to sell you the firearm then. That's kind of the
8 way we handle the situation.

9 Q You have an interrogation mechanism that works?

10 A Sort of. It's just something that we use to
11 get people to quickly answer if they --

12 Q Final question. When will the Wolfchase store
13 be able to have access to this enhanced denial tracking?

14 A Actually, they're slated to get it this month.
15 They have the hardware, or they have the fixture in. The
16 hardware has been purchased and is at our store support
17 center getting programmed. But they're actually getting
18 it -- it's our IT Department so I'd say they're slated to
19 get it this month but it'll March at the latest.

20 Q In your opinion, would this help diminish or
21 even eliminate the Krueger-type error that you saw in
22 this particular transaction?

23 A Yeah, it takes human element out, I mean,
24 almost entirely because it doesn't require you to search
25 now. It automatically searches the flags for you.

1 MR. BARNES: No further questions.

2 HEARING OFFICER: Mr. Martin, he added a bit
3 there, do you want to --

4 MR. MARTIN: No, sir.

5 HEARING OFFICER: Okay.

6 MR. BARNES: I'd like to call my next witness
7 which will be Tommy Wittman, former Assistant Special
8 Agent in Charge in the Phoenix Field Division. We do
9 have to contact him on the phone; he's standing by and he
10 should be ready.

11 HEARING OFFICER: Okay.

12 MR. BARNES: I'm sorry, I don't know how to use
13 your system.

14 MS. LANCASTER: Dial 9 and 1 and then your
15 number. Do you want him on speaker to begin with?

16 MR. BARNES: Yes, that's fine.

17 MS. LANCASTER: It's ready for you to go.

18 (Asides)

19 MR. WITTMAN: Hello.

20 MR. BARNES: Hey, Tommy. Mark Barnes, here,
21 and you're on speaker phone at the ATF Offices in
22 Memphis, Tennessee. Hello?

23 MR. WITTMAN: Yes, Mark. You're
24 (indiscernible) is broken. Let me (indiscernible).

25 MR. MARTIN: And that's not going to work.

1 MR. BARNES: Okay. Let me try him on --

2 MR. WITTMAN: (indiscernible) broken.

3 MR. BARNES: Okay. This might be an IP phone.

4 MS. LANCASTER: It must be those storms in
5 between.

6 MR. BARNES: Tommy, can you hear me, I'm off
7 speaker? I'm going to try you on the cell phone speaker
8 because this is an IP phone and that might be part of the
9 problem. Let me try that, okay? I'll call you right
10 back.

11 (Asides)

12 MR. WITTMAN: Hello.

13 MR. BARNES: Hi Tommy, can you speak up? I put
14 you right next to --

15 MR. WITTMAN: Yeah, much better.

16 MR. BARNES: Okay, very good. Mr. Reilly,
17 we're ready to proceed and maybe if you could give
18 30 seconds to Mr. Wittman on who's in the room, or I can
19 if you wish.

20 HEARING OFFICER: Sure.

21 (Whereupon,

22 TOMMY WITTMAN

23 was called as a witness, and after having been first duly
24 sworn, was examined and testified as follows:)

25 HEARING OFFICER: Mr. Wittman, just for the

1 record, can you state and spell your last name; state
2 your name and spell your last name, please?

3 THE WITNESS: Sure. It's Tommy Wittman,
4 W-I-T-T-M-A-N.

5 HEARING OFFICER: And you're a witness for
6 Dick's Sporting Goods, is that correct?

7 THE WITNESS: Yes, that's correct.

8 HEARING OFFICER: Okay. This is a revocation
9 hearing on the matter of Dick's Sporting Goods Store
10 Number 375.

11 I'm Mr. Reilly, Mike Reilly, I'm the Hearing
12 Officer. On behalf of the Government we have Division
13 Counsel from the Nashville Field Division, Todd Martin
14 and Pat Lancaster. We have IOI, Industry Operations
15 Investigator, Thomas Williams.

16 On behalf of Dick's Sporting Goods, we have
17 Mary Tortorice who's a Vice President of Legal and
18 Compliance matters; we have Mr. Kevin Dodson who's the
19 manager for Loss Prevention and Compliance; and we have
20 Mr. Wally Nelson who's a consultant for Dick's Sporting
21 Goods; and we have Mr. Mark Barnes representing Dick's
22 Sporting Goods.

23 As an observer at this hearing, Mr. Wittman, we
24 have the Director of Industry Operations, Mr. Kevin
25 Boydston.

1 So I want to turn it over to Mr. Barnes, and
2 he is going to gather your testimony with regards to this
3 hearing, okay?

4 THE WITNESS: Very good.

5 DIRECT EXAMINATION

6 BY MR. BARNES:

7 Q Mr. Wittman, can you please describe for the
8 Hearing Officer your professional background over the
9 last 30 years?

10 A Okay. Well my association with law enforcement
11 began back when I was a police officer in Tacoma,
12 Washington. I was recruited from the police department
13 by ATF. I was a street agent in Seattle, Washington, for
14 approximately 11 years then I was promoted to the
15 Resident Agent in Charge of the field office in Salt Lake
16 City. I was there for little over three years then I was
17 promoted to Washington, D.C. where I worked at a firearms
18 division as an operations officer and then a program
19 manager and then promoted to the Special Agent in Charge
20 of the Arson and Explosive (ph.) program. From that -- I
21 was there approximately four years also.

22 Then I was promoted to the Assistant Special in
23 Charge for Dallas Field Division. I was probably there
24 for, again, almost another four years. I was the Special
25 Agent in Charge for approximately four months following

1 the recalls to the (indiscernible) in Dallas.

2 And then I was laterally transferred from the
3 Dallas Field Division to the Phoenix Field Division where
4 I was ASIC there.

5 And then I retired in 1997, yeah, 1999 and then
6 opened up a private investigation business primarily
7 doing (indiscernible) government for security
8 investigations.

9 Q Mr. Wittman, were you hired by my firm to
10 conduct an investigation into the facts and circumstances
11 surrounding a hearing or a Notice of Revocation for
12 Dick's Sporting Goods in Wolfchase, Tennessee?

13 A Yes, I was.

14 Q And in consulting with you with regard to the
15 investigation outlined, you determined did you not that
16 you wanted to interview the store employee, the clerk,
17 who was the first point of contact with the purchasers;
18 and you also wanted to interview the purchasers
19 themselves, is that correct?

20 A Yes, that is correct.

21 Q Did you, in fact, conduct those interviews?

22 A Yes, I did.

23 Q All right. I have before me Licensee Exhibit
24 Number 5 which is the report of interview with
25 Matthew Krueger and with Jason Wayne Brady and with

1 Laura Carolyn Brady. And I would ask that you outline
2 how you conducted those reports of interviews; did you do
3 them in person or telephonically?

4 A I contacted all three individuals by telephone
5 for the purpose of the interview.

6 Q And with regard to those interviews, can you
7 summarize for the Hearing Officer, because your reports
8 of interviews will be entered into the record, but can
9 you summarize for the Hearing Officer what you found with
10 regard to Mr. Krueger?

11 A Mr. Krueger was the former employee of Dick's
12 Sporting Goods who was the person who actually
13 facilitated the 4473s in both instances, both Mr. Brady
14 and Mrs. Laura Brady. Mr. Krueger had no recollection or
15 recall even after I identified Mr. Brady and Mrs. Brady
16 to him of the particulars of the actual sale.

17 We discussed how busy the store was, and he
18 indicated they're particularly very busy at the time of
19 the year, kept referring back to the purchases, I believe
20 it was on November, regarding the actual sale of the
21 Mossberg shotgun. Again, no specific recollections.

22 I asked him to, if he was aware of the
23 circumstances under which a straw purchase could occur.
24 He recounted to me scenarios of which he had seen four as
25 an employee of Dick's where straw purchases were actually

1 attempted that he prevented. He walked me through the
2 normal procedure whereby he would notify a supervisor and
3 notations would be made in an attempted sale.

4 I asked if there was anything in particular he
5 could recall on this particular transaction that would
6 cause him to think it was a straw purchase. He was quite
7 adamant that based on his training and experience that
8 had a straw purchase been attempted, he would have been
9 able to identify.

10 But neither, if he's -- if either one of them
11 would have made any indication that the weapon was for
12 somebody else or reacted differently than a normal sale,
13 he'd scoped it. He would have been key to that
14 (indiscernible) preventing the sale. Following --

15 Q In your experience as a Special Agent when he
16 went over the different scenarios, did you find those to
17 be correct and credible scenarios for attempting to
18 interdict a straw purchase?

19 A Yes. I mean, his description was very typical
20 of a straw purchase set up and nothing that he felt -- if
21 there would have been there, he would have keyed into it.

22 Q With regard to Mr. Jason Brady, did you have --
23 you conducted an interview with him as well, correct?

24 A That's correct.

25 Q And how long ago was that interview conducted;

1 we have here January 26th if that refreshes your
2 recollection?

3 A Okay. I just looked at a copy; yes, it was
4 January 26th.

5 Q Can you summarize for the Hearing Officer what
6 you found from Mr. Brady's testimony or information?

7 A Mr. Brady was, well, first of all, he was very
8 cordial and really quite apologetic. If he got, if
9 something happened, it would require the store to be
10 somehow, any corrective action taken against the store.

11 Actually when he went in to purchase the
12 shotgun in (indiscernible) the actual purchase was
13 preceded by discussions with his wife who was going to
14 participate in an upcoming pheasant hunt and she did not
15 have a shotgun.

16 He personally owned a shotgun, a rifle, a
17 pistol, at the time, but that he wanted to get his wife,
18 buy her a present, a surprise gift of this shotgun for
19 this intending hunt.

20 As reported, he goes to Dick's Sporting Goods.
21 Based on the for sale price was, he recollected it was
22 100 and some dollars for this shotgun. I don't know if,
23 how accurate his recollection of that was.

24 But he goes to the store, looks at the shotgun,
25 believes it would be the one that's for her to be able to

1 participate in this hunt, attempts to make the sale
2 and is told that he was denied. Well, I guess that
3 particular store is denied but that his purchase was
4 denied.

5 He left the store thinking it was a paper mix
6 up 'cause he was not aware that he was a prohibited
7 person.

8 At the time of the purchase, he had a concealed
9 weapons permit issued by the State of Tennessee as well
10 as a fishing and hunting license. And he had, like I
11 said, purchased a couple other weapons through legitimate
12 Federal Firearms Licensed dealers preceding this date.

13 He gets home, tells his wife that he found a
14 shotgun that he thinks would fit her, there's a
15 (indiscernible) that if she wants it, she needs to go buy
16 it herself because there was a mix up with his paperwork
17 when he attempted to buy it.

18 They trade off babysitting duties; they have a
19 couple of children, he was watching the children. She
20 goes to the store, approaches the counter and purchased
21 the shotgun. Then she returns home and (ph.) Mr. Brady
22 that she has a shotgun.

23 A few days later, he is contacted
24 telephonically by the State of Tennessee and advised that
25 he is prohibited from purchasing, any further purchases

1 of weapons and that his concealed weapons permit was
2 being revoked.

3 A short (indiscernible) says to the effect that
4 what do I do about the weapons that I have now, she said
5 she was told that he couldn't buy any further weapons but
6 that wouldn't impact the ones that he currently
7 possessed.

8 A short time after that, he was visited by
9 officers from the Memphis Police Department who advised
10 him that based on the (indiscernible) of the State of
11 Tennessee, he would be a prohibited person that they
12 needed to recover his firearms.

13 He surrendered his rifle, his shotgun, his
14 pistol and asked about his wife's shotgun. They said
15 they had to take all weapons in the house so that was
16 also surrendered, the shotgun in question.

17 Unfortunately, Mr. Brady doesn't have any
18 specific recollection of the exact month and day but
19 approximately two months ago, he was visited by two
20 individuals who identified themselves as ATF Special
21 Agents indicating that they were there to take a shotgun
22 that he had attempted to purchase sometime ago.

23 And he then told them that the shotgun had been
24 picked up by Memphis Police Department, that it was no
25 longer in his possession; enquired as to, you know, why

1 this was coming down now. And he was told by one of
2 the agents that there was suspicion that the shotgun was
3 involved in a straw purchase.

4 He says that he told the officer, or the agents
5 that the weapon that was purchased was purchased by his
6 wife for her, that he had attempted to do it as a gift
7 for her. But if he was denied, he then instructed her to
8 go get it herself.

9 Actually that's about the basis of Mr. Brady's
10 report.

11 Q Did you then have an occasion to interview the
12 wife, Mrs. Brady?

13 A I did. And Mrs. Brady recounts the situation
14 up to the purchase of the shotgun similar to Mr. Brady in
15 that she was going to go to a pheasant hunt and not have
16 a shotgun. When Mr. Brady came home from the store,
17 advised her that he had attempted to buy as a gift a
18 surprise gift shotgun for her and there was some paper
19 mix up.

20 At this point I asked her if she was aware that
21 her husband was a prohibited person, and she said no.
22 And they needed a little explanation as to what a
23 prohibited person was. I explained to her under ATF
24 guidelines what a prohibited person was, and she had no
25 knowledge of him being in a prohibited status.

1 That being aside, she then goes to the
2 store, in fact, returns to Dick's Sporting Goods, goes up
3 to the firearms counter, tells the attendant that she was
4 looking for a 12 gauge shotgun to go hunting. And I
5 believe she indicated a 12 gauge Mossberg because that's
6 what her husband said he had looked at. She did not
7 reveal her identity as to who, you know, she was and made
8 no reference to her husband having been there previously.

9 The attendant brings her a shotgun, she looks
10 at, feels it, likes it and buys it then takes it home.
11 And then proceeds to participate in the pheasant hunt
12 that was in the next week or so.

13 Q Okay. Did Mr. Brady indicate to you that he
14 had made a statement to the Special Agents who came to do
15 a "NICS pickup" that, in fact, it was his shotgun and
16 that he was the one who was going to go hunting; did he
17 say anything like that to you during your interview?

18 A No, he did not.

19 MR. BARNES: I have no further questions.

20 CROSS EXAMINATION

21 BY MR. MARTIN:

22 Q Mr. Wittman, this is Todd Martin, Division
23 Counsel for Nashville Field Division.

24 A Yes, sir.

25 Q Mr. Wittman, during the course of your inquiry

1 into this matter, did you talk to him about whether or
2 not he still had any firearms?

3 A Yes, I did.

4 Q And what did he say?

5 A I think he mentioned, well, he said he had a
6 rifle, another shotgun and a handgun, all three of which
7 were surrendered to the Memphis Police Department.

8 Q Did he say why they were surrendered to the
9 Memphis Police Department?

10 A When the officers arrived at his home, they
11 told him, as directed by the Tennessee Bureau of
12 Investigation, that he was a prohibited person and he
13 couldn't possess firearms.

14 Q Did he say why the officers responded to his
15 home in the first place?

16 A No.

17 Q Did you look into why the officers came to his
18 house and took the firearms away?

19 A Did I look into it?

20 Q Yes.

21 A I'm sorry, no, I did not. As I indicated, he
22 was under the assumption that based on his attempted
23 purchase of the weapon earlier and the denial that that
24 generated action.

25 MR. MARTIN: Okay, thank you. I have nothing

1 further.

2 MR. BARNES: Nothing further.

3 HEARING OFFICER: Thank you, Mr. Wittman.

4 MR. WITTMAN: All right, sir.

5 MR. BARNES: Thank you for being on a standby,
6 we appreciate it. Bye now.

7 I would ask that Licensee Exhibit Number 5 then
8 be entered into the record which are Mr. Wittman's
9 reports of interviews.

10 HEARING OFFICER: Licensee Exhibit 5 entered
11 into the record.

12 (Whereupon, Licensee's
13 Exhibit Number 5 was marked
14 for identification and
15 received into evidence.)

16 MR. BARNES: We're ready for our last and final
17 witness.

18 HEARING OFFICER: Okay.

19 MR. BARNES: Calling Wally Nelson to testify.

20 (Whereupon,

21 WALLY NELSON

22 was called as a witness, and after having been first duly
23 sworn, was examined and testified as follows:)

24 DIRECT EXAMINATION

25 BY MR. BARNES:

1 Q Mr. Nelson, can you state your full name for
2 the record, please?

3 A Walfred A. Nelson; I go by Wally.
4 W-A-L-F-R-E-D, middle initial A, N-E-L-S-O-N.

5 Q Can you state your professional record and your
6 current occupation, please?

7 A I was a career ATF employee on the regulatory
8 side. I started out as an inspector then alcohol
9 compliant industry operations inspectors. If I lapse
10 into calling it an inspector, I apologize.

11 I started out in 1972 with ATF in Illinois. In
12 1973, I was one of the very first inspectors who started
13 doing firearms inspections. I was trained by ATF Special
14 Agents from the Chicago Field Division on how to do
15 compliance work which previously had been done by the
16 criminal side of the house.

17 I then went to Kansas City, Omaha, Minnesota
18 then I was area supervisor in Detroit for seven and a
19 half years. I then had a tour in Washington on the staff
20 of the Assistant Director.

21 And then for nine years, I was chief of field
22 operations in Chicago which is akin to a DIO and then I
23 supervised area supervisors.

24 In 1996, I was transferred back to headquarters
25 to be the chief of the Firearms and Explosives Regulatory

1 Division which had all the licensing NFA imports, and
2 regulatory policy for firearms and explosives.

3 And from 1998 until my retirement in 2005, I
4 was the deputy assistant director for the, part of the
5 Agency and Alcohol Enforcement programs and services. As
6 such, I was responsible for the tracing center, the
7 licensing, the firearms technology branch, international
8 operations and many other operations but in particular
9 regulatory policy and compliance policy.

10 And since 2005, I have been a private
11 consultant to the firearms and explosives industry
12 specializing in compliance work, helping them to comply
13 with the laws and regulations.

14 Q Mr. Nelson, over the course of your ATF career
15 were you involved in revocation cases?

16 A I was involved in a number of revocation cases
17 as an inspector, as a supervisor, a CFO involved in quite
18 many -- I dare say, the Midwest region when I was CFO
19 there, I was probably revoking more licenses than any
20 place in the country, any region in the country.

21 Q Do you have an occasion to remember any
22 significant cases that actually went up for federal court
23 review that you were personally involved in?

24 A I do. One of the cases I worked on in Kansas
25 City, I transferred there in 1974, was a case that's

1 often cited by ATF attorneys; I was the inspector on
2 the case. We call it George's Jewelry and Loan, but it's
3 cited as Lewin v. Blumenthal out of the 8th Circuit.

4 This was the first case I am aware of at least
5 at the Circuit Court of Appeals level where the doctrine
6 of plain indifference was written up by a court, that is,
7 the failure to perform a known legal duty.

8 What was Lewin doing, what was George's Jewelry
9 and Loan doing that was plainly indifferent to the
10 regulations and the law?

11 Among other things, if a person in Kansas City
12 came to that shop and filled out the 4473 and said I am a
13 felon, they transferred a firearm to them. If a person
14 came to redeem a pawn and they said I am a felon, they
15 pawned the gun to them.

16 We did the inspection, actually, it was a
17 denial of renewal; we recommended denial of renewal. We
18 had a hearing, and ATF denied it. And the licensee
19 appealed to the Circuit, the U. S. Court in Kansas City
20 and unbelievably to me, the judge said ATF, give him his
21 license. So the Justice Department appealed to the 8th
22 Circuit.

23 And this took a number of years, and I think
24 the case didn't come out until 1978. I think I did the
25 inspection in '74-'75, but they did uphold the denial of

1 renewal and the doctrine of plain indifference.

2 Q Mr. Nelson, during the course of your
3 professional career at ATF and over the course of years,
4 were you required to train new inspectors on the concept
5 of willfulness?

6 A Well, yes. I think we, I trained many people
7 on the on-the-job instructor. As a supervisor, I
8 provided roll call training.

9 I think the most significant training that I
10 would want to talk about today was something we did, and
11 I think it was in 2003, we had all the area supervisors
12 and DIOs in one room together which is a rare occurrence.
13 And we wanted to provide national training on firearms,
14 in particular, on firearms revocation policy, denials,
15 revocations and so forth to get national consistency
16 because we saw that what was being revoked in one part of
17 the country was not even being, was maybe just being
18 cited for a violation in another part of the country.
19 And that was something I couldn't stand.

20 So we had training there and it was, and a lot
21 of it was provided by ATF counsel. And one particular
22 part of the training was provided by a gentleman, a
23 former ATF attorney that I greatly respected,
24 Paul Pendley, which some may have met in this room.

25 Paul provided training on willfulness, and I

1 remember distinctly one thing that he said. He talked
2 about willfulness and he says, you know, we may not
3 exactly agree on the exact language of what willfulness
4 is, but we know what it's not. He said it's not
5 accident, happenstance or human error. And that was the
6 training provided by Mr. Pendley in 2003, and I took that
7 to heart. I took that to heart that people do make
8 errors.

9 And I certainly think that's what occurred in
10 this case.

11 Q You were retained in this matter to help review
12 the facts and circumstances surrounding it. Have you had
13 a full opportunity to review the gun manual, the internal
14 audits, the training at the stores? And, in fact, did
15 you not even go out to Wolfchase store yourself and look
16 at their systems and their inventory?

17 A Yes. I did have a chance to review the
18 materials that they have in their gun manual and some of
19 the forms that have been introduced as evidence today.

20 Q Looking back at all your experience as an ATF
21 officer, can you summarize for the Hearing Officer what
22 in your professional opinion the practices are at that
23 store and, indeed, the Dick's national system?

24 A Well, in my opinion, the Dick's efforts at
25 compliance, taking the extra step; spending probably

1 millions of dollars to create these programs, these
2 electronic data systems; to have a whole national staff
3 of internal auditors; the training they go through is
4 exemplary. I mean, it's number 1. If it's not
5 number 1, it's darn close to it as far as a national
6 exercise by any FFL.

7 Q When you visited the Wolfchase store, did you
8 have an occasion to look at the denial log system?

9 A Yes, I did.

10 Q And can you compare that in your experience not
11 only as your experience as an ATF officer but your
12 current consultancy to the entire trade where you have an
13 occasion to view many different firearms operations?

14 A Yes. It's uncommon. Some people will have
15 maybe a chalkboard or a grease board where they put up a
16 pencil, you know, so and so was denied or something like
17 that. But no one to my knowledge has such a systematic
18 effort as Dick's does.

19 Q Okay. Did you have an occasion to look at the
20 facts and circumstances surrounding the allegations in
21 the Notice of Revocation given by the Bureau?

22 A Yes.

23 Q And in your professional opinion, is the Bureau
24 well founded in proceeding in this manner?

25 A I don't think so. I attribute this to human

1 error. Looking at the facts and the records that are
2 there, that the employee didn't do his duty, you know,
3 and shame on him. And I have never heard of a licensee
4 being cited for a false bound book, disposition record in
5 the case of an undetected straw purchase.

6 Q You're saying that in the Notice of Revocation,
7 the allegations that were asserted with failure to record
8 the actual purchaser in A&D system, that is failure to
9 record Mr. Brady's information as opposed to
10 Laura Brady's information, you've never seen that cited?

11 A I have not seen that. When I saw the
12 violation, I thought well, perhaps there was evidence
13 that Mr. Brady actually was next to her and picked up the
14 gun. And in that case, that would be a proper citation.
15 But that didn't seem to be the case here.

16 Q In the case where there's actual willfulness
17 demonstrated to the Bureau or to an Industry Operations
18 Investigator, is the Bureau obligated to proceed with a
19 revocation even if they believe that there was
20 willfulness in a particular matter?

21 A The pertinent statute is, I believe, 18 U.S.C.
22 923(e), and it says that the Bureau may revoke if they
23 find a violation of the law or the regulations; the key
24 word may. There's no duty, it's not shall revoke, must
25 revoke; it's may revoke. So there is some discretion.

1 And in my opinion, this is a case where that
2 discretion should be exercised because many stores miss
3 straw sales, despite their best efforts, they miss them.
4 And if a licensee is going to be revoked because they
5 missed a straw sale, a lot of licenses are going to get
6 revoked because they do miss them.

7 And I'm not aware of a case of someone being
8 revoked for a missed straw sale on a single instance, a
9 single fact situation on their first inspection after six
10 years in business and that's basically the only
11 violation.

12 MR. BARNES: I have no further questions.

13 HEARING OFFICER: Mr. Martin?

14 CROSS EXAMINATION

15 BY MR. MARTIN:

16 Q Mr. Nelson, you talked about 923(e) and there's
17 a bit of leeway there whether or not a license is
18 revoked, right?

19 A Right.

20 Q And you said, in fact, that you've never heard
21 of anyone being, had their license revoked because of one
22 instance, right, of a straw purchase? They missed one
23 instance of straw purchase, you've never heard anybody --

24 A They failed to detect a straw, a possible straw
25 purchase, yes. I've not heard it.

1 Q Let me ask this. Do you disagree that this
2 is a straw purchase?

3 A Based on the information we developed in our
4 investigation, I do not believe it was a straw purchase.

5 Q You've heard other testimony here today, do you
6 believe it was a straw purchase?

7 A I believe it's in doubt.

8 Q You believe it could be or couldn't be, you
9 don't know now?

10 A It's a no.

11 Q It's a -- okay. What's in doubt for you?

12 A I'm not sure.

13 Q What are you not sure about?

14 A Whether it was a straw purchase or not.

15 Q Do you believe that Mr. Brady came in to
16 purchase that firearm?

17 A Yes and based on the --

18 Q I just asked that question.

19 A Yes.

20 Q Do you believe that Mrs. Brady later came in to
21 purchase that firearm?

22 A Yes.

23 Q And you believe that she put down -- you've
24 looked at the 4473 that Mr. Brady filled out, didn't you?

25 A Yes.

1 Q And you've looked at the 4473 that Mrs.

2 Brady filled out, right?

3 A Yes.

4 Q You looked at the time between the time

5 Mr. Brady was denied and the time that Mrs. Brady picked
6 up the firearm, right?

7 A Yes.

8 Q And you've looked at who the clerk was during
9 those transactions, right?

10 A Yes.

11 Q Same clerk, same address, same firearm, same
12 last name on the 4473s, right?

13 A Yes.

14 Q And you've heard the testimony from the agent
15 for ATF that says when I talked to Mr. Brady, he said I
16 wanted the firearm, I was going to buy the firearm then
17 he sends his wife back in. You heard that testimony,
18 right?

19 A Yes.

20 Q And that was in September of, well, your agent
21 interviewed Mr. Brady in January of 2014, right?

22 A Yes.

23 Q September previous to this when it would have
24 been closer in time for him, ATF sent an agent to talk to
25 him to pick the firearm up, right?

1 A Yes.

2 Q And Mr. Brady told that agent something
3 completely different than what he told the former agent
4 that you all hired as an investigator, correct?

5 A Yes.

6 Q And so why do you have doubt that this was a
7 straw purchase?

8 A Because we have conflicting information from
9 Mr. Brady.

10 Q And does it help your cause for it not to be a
11 straw purchase?

12 A Would you rephrase that, please?

13 Q What part did you not understand that I can
14 help you --

15 A My cause.

16 Q Who are you employed by?

17 A Mr. Barnes.

18 Q And Mr. Barnes has hired you to assist him in
19 this case?

20 A Yes.

21 Q And so does it help Mr. Barnes' client if it's
22 not a straw purchase?

23 A Yes.

24 Q And so is that why you have doubt that this is
25 a straw purchase, Mr. Nelson?

1 A I have doubt because our investigator talked
2 to both Mr. and Mrs. Brady, and Mrs. Brady said she
3 bought it for herself to go hunting.

4 Q And that's in direct conflict with what
5 Mr. Brady said, isn't it?

6 A Not to our investigator.

7 Q From the testimony here today, you've heard
8 that there was another story, right?

9 A Yes.

10 Q Okay. Now you said that you disagree with
11 revocation, right?

12 A No, I approve of revocation where it's willful.

13 Q In this instance, you disagree with the
14 revocation of the license of Dick's Sporting Goods?

15 A Absolutely.

16 Q And that's not your call though, is it?

17 A Well, no, it's not my call, obviously.

18 Q You talked about millions of dollars that
19 Dick's Sporting Goods has spent. And I think you said if
20 it's not number 1, it's very close to number 1 for
21 efforts that they have out there to try to track the
22 firearms and engage in the business of being a federal
23 firearms dealer?

24 A Absolutely.

25 Q And yet despite all these millions of dollars,

1 all of these hoops and hurdles that Dick's Sporting
2 Goods has put up, in this instance, a firearm got into
3 the hands of a person who is prohibited to have the
4 firearm; isn't that correct?

5 A Again, Mrs. Brady testified she bought the gun
6 for herself.

7 Q Do you recall that, do you know -- have you
8 looked into the Memphis Police Department's report, have
9 you looked at that?

10 A I have not.

11 Q So you don't know if Memphis Police Department
12 picked them up just from him or from his wife, right?

13 A Well the investigator said that they picked
14 them up, Mr. Brady said they picked up the wife's gun as
15 well.

16 Q Okay. You mentioned a case that you worked on,
17 the very first case that they discussed plain
18 indifference I think is what you said, right?

19 A Yes.

20 Q That was in '73-4, but the case came out in --

21 A '78 --

22 Q Yeah.

23 A -- I think it was.

24 Q And so that's the 8th Circuit, we're talking
25 about the 6th Circuit here, correct; you're aware that

1 this is the 6th Circuit?

2 A That's right.

3 Q And that's Circuits disagree at times about
4 whether or not something is going to be upheld or not
5 upheld, right?

6 A Yes.

7 MR. MARTIN: Okay, that's all.

8 MR. BARNES: Just some brief redirect.

9 REDIRECT EXAMINATION

10 BY MR. BARNES:

11 Q Mr. Nelson, as Mr. Martin pointed out, you
12 heard some testimony today from Special Agent Howard.
13 Special Agent Howard said that he did not interview
14 Mrs. Brady, is that correct?

15 A That's correct.

16 Q And the report of investigation or the report
17 of interviews that you reviewed had three interviews, is
18 that correct?

19 A That's correct.

20 Q Mr. Krueger, Mrs. Brady and Mr. Brady.

21 A That's right.

22 Q From your standpoint, were any of those
23 renditions or information provided by the witnesses
24 inconsistent with one another?

25 A No.

1 Q You also heard Special Agent Howard say that
2 he did make a record of interview of the so called NICS
3 pickup attempt because he didn't recover the gun; the
4 Memphis Police have the gun. His reference to a record
5 of interview -- have you read that record of interview?

6 A I have not.

7 MR. BARNES: I have no further questions.

8 MR. MARTIN: Nothing on recross.

9 HEARING OFFICER: Okay, Mr. Barnes. Where are
10 we in your presentation?

11 MR. BARNES: We're done with our witnesses and
12 our -- I want to make sure that we didn't fail to do one
13 thing which was -- no, we got everything into evidence,
14 Mr. Reilly.

15 HEARING OFFICER: We're at five, right?

16 MR. BARNES: Yes, sir.

17 HEARING OFFICER: Okay. Government Exhibits 1
18 through 5 --

19 MR. BARNES: The Licensee Exhibits 1 through 5.

20 HEARING OFFICER: Sorry, one through five
21 entered into the record.

22 MR. BARNES: Right.

23 HEARING OFFICER: Does that conclude your
24 presentation?

25 MR. BARNES: It does, Mr. Reilly.

1 HEARING OFFICER: Okay. We've been going
2 about an hour and a half. If we only have closings then
3 do we want to plow forward?

4 MR. BARNES: I agree.

5 MS. LANCASTER: Plow away.

6 HEARING OFFICER: The Government's up first and
7 the Licensee gets the last word. How's that, Mr. Barnes?

8 MR. BARNES: Fine.

9 MR. MARTIN: Shall I (indiscernible).

10 HEARING OFFICER: I'm sorry?

11 MR. MARTIN: Should we proceed?

12 HEARING OFFICER: Yes.

13 MR. MARTIN: Today's a good day. Today's a
14 good day for Dick's Sporting Goods, a good day for the
15 Nashville Field Division, for the people of Tennessee,
16 for Federal Firearms Licensees and purchasers of firearms
17 across this country because today we're talking about
18 solely the revocation of a firearm due to a straw
19 purchase in the records and books.

20 You don't have to look very far in this country
21 to hear of tragedies that befall people. And invariably,
22 you hear people say, you know, it's sort of odd but I
23 really didn't know about that, didn't think about that,
24 something weird was going on. But that purchase then
25 goes, that person goes out and takes a firearm and they

1 do something that hurts firearm owners, firearm
2 dealers across the country.

3 Today's a good day because that didn't happen
4 in this instance despite the fact that the firearm was
5 purchased and was held by Mr. Brady for a number of
6 months.

7 When the Memphis Police Department went out
8 there, they went out there solely to address the
9 disturbance and as a result, they took those firearms.
10 So today's a good day for Dick's, Tennessee and gun
11 owners and gun sellers across the country.

12 We're not talking about tragedy, we're talking
13 about responsibility and accepting that responsibility.

14 Dick's Sporting Goods goes through a number of
15 hoops and you've put a number of things up. And as
16 Mr. Nelson said, you spend millions of dollars to do so.
17 And there are federal firearms dealers across this
18 country who are mom and pop shops that don't need to do
19 that because of volume, but they still can comply and
20 they can still accept responsibility when they do make a
21 straw purchase sale.

22 Now, the testimony is that this purchase was
23 attempted by Mr. Brady so Mr. Brady didn't have to borrow
24 a firearm, and he think he could go out and he could hunt
25 on his own. When that firearm was denied him, as it

1 should have been, he then took some action to get his
2 wife to go back and purchase it for him.

3 Now, sadly, all the hoops and hurdles that were
4 put up didn't work, and he got access to that firearm.
5 So we don't have to talk about that, that tragedy. We
6 don't have to talk about whether it's dove hunting or
7 pheasant hunting or whether it's anything else. But what
8 we do know is that he had access to the firearm, and it
9 should have been stopped when the person with the same
10 last name, the same address, got the same make and model
11 of firearm on the same day from the same clerk. All of
12 those things are in evidence.

13 So this is about an FFL, a large FFL, Dick's
14 Sporting Goods, who's accepted the responsibility of
15 being a Federal Firearms Licensee and all the things that
16 come with that. And that's compliance with the law,
17 making sure prohibited people don't have those firearms,
18 keeping your records and as the IOI said,
19 chronologically, alphabetically.

20 You walk back and you look at the sheet and you
21 see Jason Brady's name and that address, you don't even
22 have to go -- there are 24 other letters of the alphabet
23 that he would have had to look at. It's the same day
24 within three transactions. The only denial that day. If
25 it was done chronologically, he wouldn't have to look at

1 the other 364 days of the year preceding it. He could
2 have looked at that that fast and known.

3 Now, there's been some talk about the
4 8th Circuit and other Circuits, but the standard is that
5 if you know of that obligation, you fail to abide by it
6 then you're acting willfully at that point. And the
7 actions of your employee are imputed to you. Those mom
8 and pop shops may be a one-man operation. Certainly
9 Dick's Sporting Goods has more than one person that
10 stands behind the counter, that's not in evidence but
11 it's just a fact that Dick's Sporting Goods is going to
12 have more people, more customers and more people.

13 But in this instance, it's the same clerk, the
14 same day, less than nine hours separate that. It was his
15 only denial that day. The fact that it's one instance as
16 Mr. Barnes pointed out doesn't matter. The laws clear,
17 one instance suffices. You only have to do one, and your
18 license can be revoked. And that's a 6th Circuit case.

19 The fact that Dick's didn't do this to say I
20 want Mr. Brady to have this firearm as Mr. Nelson was
21 talking about. When someone comes in and they're a felon
22 and they say we don't care if you're a felon, we're still
23 going to give you a firearm.

24 An evil motive is not required, not in the 6th
25 Circuit. The fact that you have that responsibility and

1 you deny that responsibility, that is sufficient. In
2 this case, this is adequate.

3 Again, this is a lucky day for Dick's;
4 Nashville, Tennessee; and quite honestly, all Federal
5 Firearms Licensees and firearms owners. Thank you.

6 HEARING OFFICER: Mr. Barnes.

7 MR. BARNES: Well, it may be a lucky day in one
8 sense, but I think the most important point of this
9 entire proceeding today is the point that the Gun Control
10 Act does not demand perfection, it demands persistence,
11 and where that persistence is attended to in a
12 responsible manner which Dick's does every day. Dick's
13 has dedicated itself to having one of the finest
14 compliance systems in the United States.

15 So there is no question and there can be no
16 doubt that they are dedicated to public safety and to
17 compliance. And they've shown that day in and day out
18 with over 500 stores that conduct firearms operations.

19 To show why I think this revocation is
20 unwarranted is that there's been no taking into account
21 any of the mitigating factors and a major one being human
22 error. There is no question that Dick's has admitted
23 that there was human error.

24 But I think that the 4th Circuit in RSM v.
25 Herbert sums it up pretty well. To be sure, a single or

1 even a few inadvertent errors in failing to complete
2 forms may not amount to willful failures even when the
3 legal requirement to complete the forms was known. Yet
4 at some point when such errors continue or even increase
5 in the face of repeated warnings given by enforcement
6 officials, a company by explanations of the severity of
7 the failure is one may infer as a matter of law that the
8 licensee simply does not care about the legal
9 requirements.

10 The Government has failed to show that,
11 number 1, the Licensee didn't care. The Licensee did
12 care very, very much, and it took all the appropriate
13 measures to ensure that the law would be complied with,
14 the training, the auditing, the internal compliance
15 systems.

16 Yes, it's true that a mom and pop operation
17 can't afford those systems and yes, it's true, that in
18 those cases they have more simplified systems. And I've
19 seen many small dealers that have fairly sophisticated
20 ways of detecting straw purchases as well.

21 But whether you're large or small, if you are
22 conducting your operations in generally an exemplary
23 manner, the government has never revoked a license simply
24 because human error was involved and that is the case in
25 this particular matter.

1 It may be true that we have evidence that's
2 disputed as to what Mr. Brady's intent was on the day
3 that he came to purchase the gun and ought to leave that
4 to the tryer of fact maybe to look at that. We're
5 convinced that he came to buy the gun as a gift and that
6 Mrs. Brady subsequently bought it for her own account.

7 But even if we accepted the Government's
8 theory, the Government hasn't proved willfulness at all.
9 All we have is a situation where we had a clerk that
10 simply had a forgetful moment and went and did his
11 procedure, and he was so mechanically involved in it, he
12 can't even recall the sale now because it's not
13 remarkable; everything was normal. Nor were any
14 statements according to Mrs. Brady ever made to him to
15 give him a hint that there might be a prior transaction
16 that he needed to be worried about. It was just simple
17 forgetfulness, an inadvertent error.

18 And when we take a look at all the facts and
19 circumstances, all the mitigating factors that come into
20 this case, and there are many including the IOI not even
21 wanting to recommend revocation or he didn't recommend
22 revocation, and the fact that there was an immediate
23 improvement that's been put into place by Dick's for
24 their national system to try to even eliminate this human
25 error.

1 So the fact of the matter is there was no
2 willfulness in this case. And that alone when you look
3 at the entire inspection and you look at the entire store
4 operations really shouldn't be the final basis for going
5 and proceeding with a revocation in this case. Thank
6 you.

7 HEARING OFFICER: Thank you, Mr. Barnes. Thank
8 you to everyone who participated in the hearing. I
9 appreciate the efforts putting into addressing the
10 notice.

11 The Director of Industry Operations for the
12 Nashville Field Division is going to make the final
13 decision on this license based upon this hearing. If
14 that decision is that the license is not revoked, you'll
15 be notified in writing as such, okay.

16 In the event that the Director of Industry
17 Operations reaches the decision that the license will be
18 revoked, the final Notice of Revocation on Form 4501 will
19 be issued along with a copy of the findings and
20 conclusions made by the DIO.

21 If a final Notice of Revocation is received on
22 the ATF Form 4501, the Licensee may file a request in
23 federal district court in the district where they conduct
24 business for what is called *de novo* review. And that can
25 be filed under the provisions of § 923(f)(3), Title 18,

1 the United States Code. The important note to make
2 with regards to that is that the request needs to be made
3 within 60 days of receiving the notice.

4 Unless anyone else has anything further to add.

5 MS. LANCASTER: Nothing for the Government.

6 MR. MARTIN: Nothing from the Government.

7 MR. BARNES: Nothing further.

8 HEARING OFFICER: Thank you. The time is 1:05,
9 and I declare this hearing closed.

10 (Whereupon, the hearing was closed at 1:06 p.m.
11 on February 5, 2014.)
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CERTIFICATE

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I hereby certify that the testimony given in
the matter of:

Dick's Sporting Goods

FFL # 1-62-157-01-3K-03207

Before MICHAEL T. REILLY, Hearing Officer, was
transcribed by the undersigned for FREE STATE REPORTING,
INC., and said transcript is a true record, to the best
of my ability, of said testimony.

Christina H. Neilson

Christina H. Neilson, Transcriber